

THE FRAMING
OF
INDIA'S CONSTITUTION
SELECT DOCUMENTS

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THE FRAMING OF INDIA'S CONSTITUTION

SELECT DOCUMENTS

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THE FRAMING OF INDIA'S CONSTITUTION
A STUDY

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PREFACE

In this fourth Volume of the series on the framing of India's Constitution are included several important documents having a bearing on the texts of various articles at different stages before they were finalized. The period during which this process took place extended from February, 1948, when the Draft Constitution as settled by the Drafting Committee was published, to November, 1949, when the Constitution was finally adopted by the Constituent Assembly. This period represents a vital phase in the evolution of India's Constitution. A number of events of historic importance took place during this period and these inevitably influenced the discussions in the Assembly on the provisions of the Constitution.

The Draft Constitution, as settled by the Drafting Committee, was widely circulated. Copies were sent to all members of the Assembly, to the Provincial Governments and Legislatures, to the Ministries of the Government of India, and to the Federal Court and the High Courts. Copies were also made available to the general public. A large number of comments and suggestions was received and the Drafting Committee found it necessary to meet in March, 1948, to consider these suggestions. At this stage it was also decided that a Special Committee, consisting mostly of members of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee, should examine the Draft Constitution and these comments and suggestions. In particular this Special Committee was requested to consider certain provisions which departed from the decisions taken earlier by the Assembly. The Special Committee met for this purpose on April 10 and 11, 1948.

The Drafting Committee met again in October, 1948, to review the whole position in the light of the views expressed by the Special Committee, and the comments and suggestions received subsequent to its meeting in April. Meanwhile,

detailed notes were recorded in the Constituent Assembly Secretariat on all these suggestions. In the light of the decisions taken in October, 1948, the Chairman of the Drafting Committee, B. R. Ambedkar, made a fresh report to the President of the Assembly, indicating the amendments which the Committee had selected for being moved in the Assembly. This report reproduced in parallel columns the text of the Draft Constitution as published in February, 1948, and the amendments which the Drafting Committee proposed to sponsor for the consideration of the Assembly.

The Draft Constitution was introduced in the Assembly on November 4, 1948. Discussions on it took place for over a year and the Constitution was finally adopted on November 26, 1949. These discussions took place in several stages. There was first a general discussion mainly on the principles of the Constitution, which took five days. The clause-by-clause consideration of the Constitution started on November 14, 1948, and concluded on October 17, 1949. The Assembly then adjourned for about four weeks, during which period the Constitution, together with the amendments adopted by the Assembly, was again remitted to the Drafting Committee with instructions to carry out such renumbering of the articles, clauses and sub-clauses with the necessary changes in punctuation and such revision and completion of the marginal notes as might be necessary; and on the completion of the task, the Drafting Committee was to recommend such formal or consequential or necessary amendments to the Constitution as might be required. In other words, the Drafting Committee at this stage had the onerous task of incorporating all the amendments adopted by the Assembly and giving final shape to the Constitution. This it did in the course of a few weeks: the Constitution as revised was considered by the Assembly again on November 14, 15 and 16, 1949. The Assembly then proceeded to consider a motion by Ambedkar that the Constitution as settled by the Assembly be passed. Discussions on this motion occupied nine days and the Constitution was finally adopted on November 26, 1949.

Meanwhile, as already stated, several events of far-reaching importance had taken place in the country. The integration of the Indian States was little short of a bloodless revolution which resulted in basic changes in the political structure of India. The process of integration and democratization of the Indian States, which had just begun when the Draft Constitution was issued, was practically complete by October, 1949. To start with, the position was that these States would accede to the Union of India through suitable Instruments; and their internal Constitutions were to be no part of the business of the Constituent Assembly. All this changed with lightning rapidity and the position, as it finally emerged, was that the States (which term included territories which at that stage remained viable units) would occupy the same position as the other units of the new Union of India; and the new Constitution would also provide for their internal Constitutions. The fundamental rights provided in the Constitution would also extend to them; so would adult franchise. And the same type of democratic institutions as were being set up in the Provinces of the Dominion of India would also be set up in the Indian States. The Constitution had to be enlarged to provide for these radical developments.

Another important development during this period was the decision to abolish special privileges for religious minorities. Separate electorates, the reservation of seats in Legislatures, special arrangements for representation in public services, and other similar political privileges had featured as parts of the Indian political arrangements ever since the early years of the century. Some of these arrangements were, in the earlier phases of the discussions on the new Constitution, adopted in the new constitutional set-up. But as the work of the Advisory Committee proceeded, the feeling grew among the minorities themselves that special rights for sections of the people on a religious basis would be inappropriate in a democratic Constitution, and might even be harmful to the communities themselves. The Committee therefore advised that any special safeguards would be necessary only for the

backward and depressed sections of the people, like the Scheduled Castes and the Scheduled Tribes. This epoch-making decision was placed before the Assembly in May, 1949 and adopted by it.

The question of Centre-State relationship inevitably demanded a considerable measure of attention. In July 1949, the Drafting Committee held a conference with the Premiers of the Provinces and of some of the Indian States and the representatives of Central Ministries, at which there was a frank interchange of views. The discussions covered a wide range of matters; they included financial relationship, the legislative lists, and the exercise of taxing powers. Items which claimed special attention were the powers of States to levy taxes on the sale of goods, and the liability of the property of the Union to State taxes and of State property to taxation by the Union.

Another subject which claimed a considerable amount of attention and evoked a great deal of feeling was the language issue. This issue was kept out of formal discussion in the Assembly until the very end; but the indications were that it might threaten to divide the Congress party sharply on regional lines. Fortunately, it was ultimately found possible to evolve a formula which proved acceptable to all—even if the acceptance was in some respects half-hearted.

The documents in the present volume cover a wide range of subjects and are arranged in nineteen parts. The most important of these relate to the comments and suggestions made on the Draft Constitution. The more significant comments received during the period February-October 1948 and the amendments eventually recommended by the Drafting Committee, together with the notes recorded on the comments and the amendments, have been grouped under each article of the Draft Constitution. Other papers that are included relate to the developments in regard to the integration of the Indian States, the evolution of a formula on the language issue, and the report of the Advisory Committee on the minority question. Also to be found in the volume are the report of the Linguistic Provinces Commission, comments on the citizenship provisions

and papers relating to various other matters discussed at this stage. The minutes of the Conference of the Drafting Committee with the Premiers and Finance Ministers of the Provinces and the Indian States, and the papers circulated in connection with this Conference, also find a place in the volume. So does the correspondence containing the views of the Provincial Governments on certain financial matters. Ambedkar's speech introducing the Draft Constitution has been included, as also the memorable speech made on October 12, 1949, by Vallabhbhai Patel, on the solution of the Indian States problem; and the speeches made by Rajendra Prasad and Ambedkar at the concluding stage. In order to complete the picture, the Draft Constitution as revised by the Drafting Committee on November 3, 1949, has also been included.

The Assembly took two years, eleven months and seventeen days to complete its labours, from December 9, 1946 to November 26, 1949. During this period it held eleven sessions and its total working days numbered one hundred and sixtyfive.

Notices of as many as 7,635 amendments to the Draft Constitution were received; of these 2,473 were moved and considered in the Assembly. The total expenditure on the Assembly up to November 22, 1949 was given as Rs. 6,396,729.

On November 26, 1949, the President authenticated the new Constitution of India, thereby bringing it into force in accordance with the tenor of its provisions. Actually, only a few provisions came into force on that day—those relating to citizenship and a few other formal articles. The Republic of India established by the Constitution came into being on January 26, 1950; and on that day the Constituent Assembly ceased to exist, transforming itself into the Provisional Parliament of India—until the new Parliament was set up under adult suffrage in 1952.

NEW DELHI:
August 15, 1967.

J. N. KHOSLA



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PART ONE
DRAFT CONSTITUTION OF FEBRUARY 1948
COMMENTS AND SUGGESTIONS

COMMENTS AND SUGGESTIONS ON THE DRAFT CONSTITUTION

February-October 1948

[The Draft Constitution as settled by the Drafting Committee was submitted to the President of the Constituent Assembly on February 21, 1948 (Vol. III, Doc. 6). It was published on February 26. Wide publicity was given, so that all individuals and organizations in the country interested in the framing of India's Constitution might have an opportunity of expressing their views.]

Copies of the Draft were sent to every member of the Constituent Assembly with the request that he should send in any suggestions or criticisms on or before March 22, 1948, without prejudice to his right to propose any further amendments at a later stage. Copies were also sent to the Provincial Legislatures, Provincial Governments, Ministries of the Government of India, the Federal Court and the High Courts inviting criticisms and suggestions.

The Drafting Committee met on March 23, 24 and 27 to consider the comments and suggestions received till then. The Constitutional Adviser had examined them and prepared notes on most of them. The committee at its meetings held on these three days decided to recommend certain amendments to the Draft Constitution in the light of the comments and criticisms received.

Subsequently, the President of the Constituent Assembly constituted a Special Committee consisting mostly of the members of the Union Constitution Committee, the Provincial Constitution Committee and the Union Powers Committee, to examine the Draft Constitution as settled by the Drafting Committee and the various comments and suggestions received, with the recommendations of the Drafting Committee thereon. The committee was also asked to consider certain provisions in the Draft Constitution which departed from the previous decisions of the Constituent Assembly. These changes had been referred to by the Chairman of the Drafting Committee in his letter of February 21, 1948, forwarding the Draft to the President. It was expected that the views of this larger body on the Draft Constitution and the further recommendations of the Drafting Committee would enable the Drafting Committee to settle the final form of the Draft in such a way as to minimize the work of the Constituent Assembly.

The Special Committee met on April 10 and 11, 1948.

Suggestions for amendment continued to be received from the members of the Constituent Assembly, the Provincial Governments, the

Provincial Legislatures, Ministries of the Government of India and other Governmental organizations, as well as from non-official bodies and the general public. The Drafting Committee reassembled again on October 18, 1948, and at its meetings held on that date and on October 19 and 20 examined the comments and criticisms on the Draft Constitution received so far. The committee also further considered the recommendations of the Special Committee. As a result of this examination, the Drafting Committee selected some amendments which it proposed to support and also suggested certain others.

The Drafting Committee decided to issue a reprint of the Draft Constitution showing the amendments which it recommended for adoption opposite the articles which they sought to amend. This reprint was meant for circulation among the members of the Constituent Assembly for their use when the Draft came up before the Constituent Assembly for consideration. Accordingly when Ambedkar moved that the Draft Constitution as settled by the Drafting Committee be taken into consideration, the Assembly had before it the Draft Constitution as settled by the committee on February 21, 1948, together with the recommendations made by the Drafting Committee for amendment of certain provisions in the light of the comments and criticisms received.

In settling the Draft Constitution of February 1948, the Drafting Committee had not agreed with some of the recommendations of the Committees on the Centrally Administered Areas (Chief Commissioners' Provinces) and on the Financial Provisions of the Constitution. The Special Committee suggested that where the Drafting Committee had differed from the recommendations of these two committees, the proposals of the committees should be indicated as alternative provisions for the consideration of the Constituent Assembly. The Drafting Committee accordingly reproduced these proposals as alternative provisions in an appendix to the reprint of October, 1948.

In this Part, the more important comments and suggestions received during the period February to October, 1948, together with the amendments recommended by the Drafting Committee in the light of those comments and suggestions have been grouped together under each article of the Draft Constitution. The proposals for amendment together with the Constitutional Adviser's notes thereon (which reproduce fully the views of the Drafting Committee and/or of the Special Committee) and finally the recommendations of the Drafting Committee for amendment have been set out under each article.

In addition, the following documents have been included separately :

(i) Minutes of the meetings of the Drafting Committee, March 23, 24 and 27, 1948.

(ii) Minutes of the meetings of the Special Committee, April 10 and 11, 1948.

(iii) Letter from the Chairman of the Drafting Committee to the President of the Constituent Assembly, October 28, 1948.

The Draft Constitution was introduced in the Assembly on November 4, 1948, when Ambedkar moved that it be taken into consideration.

The clause by clause consideration began on November 15 and amendments were moved from time to time, both on behalf of the Drafting Committee and by individual members of the Assembly, as each clause was taken up for consideration. As already stated above, the papers included in this Part comprise only the comments and suggestions on the Draft Constitution made between February and October, 1948, i.e., prior to its introduction in the Assembly.]

(I) COMMENTS AND SUGGESTIONS

1. Preamble

B. Pattabhi Sitaramayya and others* : That for the word "belief" the word "association" be substituted.

Note : The reason for omitting "association" was that it would have seemed odd to stress so prominently freedom of association at a time when certain associations dangerous to the State were being banned.

B. Pattabhi Sitaramayya and others* : That for the "Fraternity" clause the following be substituted :

Fraternity assuring unity of the Nation and the dignity of the individual.

Note : This is purely a drafting amendment. It seeks to put the words "unity of the Nation" first and then the words "dignity of the individual" in the line commencing with the word "Fraternity" in the Preamble.

The reason for putting the dignity of the individual first was that unless the dignity of the individual is assured, the nation cannot be united. In the Preamble to the Irish Constitution "the dignity of the individual" comes before "the unity of our country". We may, therefore, retain the existing order of the phrase.

L. N. Sahu : That the following be added to the Preamble :

The people of India means representatives of the entire population of India, elected by adult franchise.

Note : The expression "the people of India" in the Preamble means the entire population of India: the Constituent Assembly is speaking in the name of the people of India. This amendment is misconceived. Further, it would not be correct to refer to the representatives "elected by adult franchise", as the members of the Constituent Assembly have not been elected by adult franchise. This amendment cannot, therefore, be accepted.

Upendranath Barman : That in the Preamble for the word "India" the word "Bharatbarsha" be substituted and appropriate changes be made throughout the Draft.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

Note: The term "India" has not only been in current use for well over a century and a half but is also well-known in the international world. It is not therefore advisable to change it to "Bharatbarsha" throughout the Draft.

Atul Chandra Gupta (Advocate, Calcutta High Court) considers the substitution of the word "Democratic" for the word "Independent" in the Preamble to be proper but says that the footnote to the Preamble introduces an element of obscurity. In his opinion definite provision should be made in the Constitution itself prescribing the method by which a decision for remaining in or going out of the British Commonwealth has to be taken.

Note: There is hardly any necessity for any specific provision in the Constitution prescribing the method by which a decision for remaining in or going out of the British Commonwealth has to be taken. India as a sovereign country can do so by any method which it may choose.

Note by Alladi Krishnaswami Ayyar: I am against any amendment of the Preamble at this stage especially as the Preamble is in line with the Objectives Resolution. The expression 'Republic', while it is suggestive of the citizen's share in the government of the country does not necessarily connote a democratic form of government e.g. Sparta in ancient times and Venice in medieval times. Under heading 2 in the Oxford Dictionary "Republic" is described as "A state in which the supreme power rests in the people and their elected representatives or officers as opposed to one governed by a king or similar ruler". In common parlance, it indicates a State or Government which has no hereditary head. Though sovereignty is implicit in the very conception of a State, it is better to bring it out to mark out its emergence from the status which India occupied until recently. The question of the inter-relation between India and Great Britain may be taken up later and would depend upon the kind of nexus that might be agreed to. In regard to relationship with foreign countries, it is doubtful whether India can take up the same position as the Dominions at any rate so long as race considerations seem to dominate the policies of the different Dominions. Would the Dominions be prepared to treat India on the same footing as other Dominions?

Drafting Committee: In the Preamble, for the word "Republic" the word "State" be substituted.

Note: Whether India is to be described as a Sovereign Democratic Republic or by any other name is a question which will need careful consideration. The various alternatives may be indicated thus:

Sovereign/Independent/Democratic/Republic/State/Commonwealth.

Whatever description is adopted in the Preamble will not by itself suffice to define India's relationship to the British Commonwealth of Nations.

The Constitution of Ireland states that Ireland is "a sovereign independent democratic State" and De Valera has even described it as "an

independent Republic". Nevertheless, it has hitherto been treated as a member of the Commonwealth. The Preamble to the Status of the Union Act, 1934, refers to the Union of South Africa as a sovereign independent State, but the Union is still within the Commonwealth. Australia is described in its Constitution Act as a Commonwealth which literally means the same thing as a Republic (*Res publica*, literally, public property or commonwealth); but of course, it is part of the British Commonwealth. Even in 1938 Prof. Keith was of the view that Dominion members of the Commonwealth were really and unquestionably States of International Law (Keith's "The Dominions as Sovereign States", 1938 p. 54). Since then the conception of the Commonwealth has undergone further development. When Keith wrote he was of opinion that a declaration of neutrality in a British war would really mean a determination to secede from the Commonwealth. But, as is well-known, Ireland remained neutral in the last war; nevertheless, in 1942, in the case of *Murray v. Parkes*, the Lord Chief Justice of England held—

(a) that he was not aware that Ireland had ever expressly exercised right of secession, and

(b) that even if it had, the question would still remain whether secession by Ireland could be effective unless and until the other members of the Commonwealth had recognized Ireland as a foreign State.

Apparently, then, even neutrality in a British war is compatible with membership of the Commonwealth. It would therefore seem that the conception of the Commonwealth has been growing rapidly in recent years. Indeed the Cabinet Mission's Plan of May 16, 1946, referred in paragraph 14 to "the attainment of independence by British India, whether inside or outside the British Commonwealth", implying thereby that there was room for a completely independent State inside the Commonwealth. The very name "Indian Independence Act" given by Parliament to the statute establishing the Dominion of India affords further support to this view. It follows that the mere description of India as a sovereign independent democratic State, Republic or Commonwealth in the Constitution enacted by the Constituent Assembly will not suffice to define effectively its relationship to the British Commonwealth. This is a distinct question, which will have to be decided separately. Since the question is to be decided separately, it would be inappropriate to use any name which would give the impression that the question had been prejudged. The term "Republic" has certain associations which may give such an impression, and it may therefore be wise to avoid it.

The term used in the Hindi translation is apparently *Gana Rajya*. Its primary meaning, according to Dr. Jayaswal, is a State where numbers rule:

It is necessary to ascertain what was exactly meant by *gana*.

It means 'number' : *Gana-Rajya* will therefore mean the rule of numbers, the rule by many. (Jayaswal's *Hindu Polity*, 1943, p. 24.).

If we were translating from Hindi into English, the strict rendering would be "democratic State".

[The Drafting Committee accepted this amendment, while the Special Committee was of the view that the final form of the Preamble should be left to the decision of the Constituent Assembly.]

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

2. The Union and its Territory

ARTICLE 2

B. Pattabhi Sitaramayya and others*: That for all the words after the words "by law", the following words be substituted :

acquire for or admit into the Union new territories or establish new States within the Union on such terms and conditions as it thinks fit.

Note: New territories may be acquired by the Indian Union either by negotiation, agreement or voluntary cession, even if conquest is out of the question, and no legislation by Parliament is necessary for the purpose of such acquisition. Indeed, until an area becomes part of the territory of India, Parliament cannot legislate for it (Art. 216). As soon as any territory is acquired, it will fall under sub-clause (c) of clause (3) of article 1, and the provisions of Part VIII of the Draft will apply to the administration of such territory.

Article 2 applies to the case of admission into the Union, or the establishment, of new States. It is modelled on section 121 of the Commonwealth of Australia Constitution Act. When an Indian State accedes to the Union it will be deemed to be admitted into the Union as a new State within the meaning of article 2 of the Draft. When any territory, such as the Andaman and Nicobar Islands, is formed into a State, the new State is deemed to be established within the meaning of the article.

This amendment is not therefore necessary.

ARTICLE 3

B. Pattabhi Sitaramayya and others*: That in clause (a), the following words be added at the end :

or by addition of other territories to States or parts of States.

Note: One part of this amendment is hardly necessary; for when any territory is added to any State, clause (b) of article 3 of the Draft will

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

apply. Also, there is, strictly speaking, no "new State" when territory is merely added on to an existing State. Theoretically it is possible to have a new State by uniting a "territory" to a part of an existing State and if it is considered necessary to cover this possibility, we may accept the other part of this amendment and add, at the end of clause (a), the words "or by uniting any territory to a part of any State".

Sachchidananda Sinha : That for clause (b) of the proviso to article 3, the following be substituted:

(b) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I or Part III of the First Schedule, the previous consent of the Government of the State or, as the case may be, of each of the States to the proposal has been obtained.

Note : If this amendment is accepted, then no Bill for any of the purposes specified in clauses (a) to (e) of article 3 may be introduced without the previous consent of the Government of the State or of each of the States, the boundaries or name of which would be affected by the proposal contained in the Bill. This would make the provisions of article 3 very rigid and redistribution of the boundaries of States under this article would be very difficult if not an impossibility, for a State will hardly agree to be divested of any area which forms part of it. However, this involves a question of policy.

The West Bengal Legislative Assembly has proposed that the proviso to article 3 should be omitted. The main grounds urged for the deletion of the proviso are:

- (1) that there should not be any restriction as to the introduction of a Bill for the purposes mentioned in that article;
- (2) that it is unnecessary to obtain the view of the Legislature of the State or States affected, for when an area is proposed to be separated from a State the Legislature of such State will hardly agree to such a proposal.

Note : The amendment involves a question of policy.

Under the revised draft of this article as proposed by the Drafting Committee, it will be necessary only to obtain the recommendation of the President before the introduction of a Bill and to ascertain the views of the Legislatures of the State or States whose boundaries or name are affected with respect to the proposal to introduce the Bill and with respect to the provisions thereof. The first condition has been imposed to prevent the introduction of frivolous Bills for any of the purposes mentioned in article 3. The second condition which is based on the existing provisions of section 290 of the Government of India Act, 1935, and which requires the views of the Legislatures of the States to be ascertained and placed before Parliament, is necessary to enable Parliament to take into account such views before coming to any decision. It would however be open to Parliament either to accept or reject the views expressed by such States.

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that everything in article 3 after the words "except by the Government of India" should be deleted, for in his opinion Parliament should be given unfettered initiative in the matter to be exercised according to its policy and by the procedure laid down by itself and that the initiatory conditions are neither clear nor quite reasonable.

Note: The revised draft of article 3 suggested by the Drafting Committee and agreed to by the Special Committee will meet some of the objections of Gupta. The Drafting Committee was also of opinion that in the case of a State specified in Part III of the First Schedule affected by the proposal the previous consent of the State is essential before any action under article 3 in respect of such State is taken, and that in the case of a State specified in Part I of that Schedule affected by the proposal the views of the Legislature of the State should be ascertained. This latter condition also finds a place in the existing section 290 of the Government of India Act, 1935. It is therefore hardly possible to delete clause (b) of the proviso to article 3.

Drafting Committee: That for the existing proviso, the following proviso be substituted:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where such proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been obtained.

Note: In connection with article 3, we shall, in practice, have to consider the following classes of cases:

- (1) For separating any territory from a Governor's Province and forming it into a new Governor's Province. (This includes a case where territories are separated from two different Governors' Provinces and formed into a single Governor's Province.)
- (2) For separating any territory from a Governor's Province and adding it to another such Province.
- (3) For adding a Chief Commissioner's Province to a Governor's Province.
- (4) For adding acquired territory to a Governor's Province.
- (5) For uniting two or more acquired territories to form a Governor's Province.

It is possible to imagine other cases ; but these are the ones most likely to arise in practice.

It is clear from the context that clauses (a) and (b) of the proviso to article 3 are not intended to apply in respect of a State for the time being specified in Part II of the First Schedule, that is, a Chief Commissioner's Province, for Parliament itself is the Legislature of such a State and the Bill for the purpose would be introduced in Parliament. It is equally clear that clause (a) is not intended to apply in respect of an Indian State, because under clause (b) the consent of such a State is necessary in any event. It follows that the State referred to in clause (a) is a Governor's Province and not a Chief Commissioner's Province or an Indian State.

Again, it is clear from the context that the expression "the State" in clause (b) of the proviso in the two places where it occurs refers to every State whose boundaries or name will be affected by the proposal contained in the Bill.

Instead of relying upon the context we should make the above points clear from the text itself.

The Drafting Committee was of the view that in order to avoid the complications created by clause (a) of the proviso to article 3, the best course would be to omit it altogether. No harm would be done by the omission, because clause (b) of the proviso contains sufficient safeguards as regards States in Part III of the First Schedule. As regards States in Part II of the First Schedule it must be remembered that their sole or main Legislature is the Central Legislature itself, where the Bill has to be introduced, and the representatives of such States in that Legislature will thus have an opportunity of expressing their views on the subject. If clause (a) of the proviso is omitted, clause (b) may be split up into two parts, one dealing with States in Part I of the First Schedule and the other with States in Part III of the First Schedule. It would also be desirable to substitute the phrase "except on the recommendation of the President" for the phrase "except by the Government of India": cf. the language of article 97, where the former phrase is used. The whole proviso is accordingly proposed to be amended as shown above. (The Special Committee has agreed to the proposed amendment.)

Decision of the Drafting Committee, October, 1948: The Committee decided to sponsor the amendment in the terms proposed by it.

Note by Alladi Krishnaswami Ayyar (March 24, 1948): On a careful reading of article 3 as drafted I think it is open to serious objection and requires revision.

Article 3 under head (a) deals with separation of a territory and the union of two or more States or parts of States; under heads (b) and (c) with increasing and diminishing the area of a State ; under heads (d) and (e) with altering the boundaries and the name of a State.

The condition requisite for the exercise of the power of separation as

provided for in clause (a) (i) of the proviso is that a representation by the majority of the representatives of the territory in the Legislature of the State from which the territory is to be separated or excluded must be made. Read along with the main part of the article clause (a) (i) of the proviso may be taken to relate or to apply only to heads (a), (b) and (c). The case of boundary is separately dealt with in sub-clause (b) to the proviso which refers to the consent of the State whose name or boundaries will be affected being obtained. As the result of the differentiation made in the opening words of the article and in the sub-clauses between separation and alteration of boundary, the article may be open to the construction that in the case of separation all that is necessary is a representation on behalf of the representatives of the territory and that the consent of the State or the Ruler of the State as the case may be is not necessary. The further condition in clause (a) (ii) and clause (b) may not apply to a case of separation having regard, as mentioned above, to the differentiation made in the article between separation of territory and alteration of boundaries.

There is also a further point to be noticed that under clause (a) (i) the representation need not be made by a majority of the representatives in the Legislature (neither absolute majority nor simple majority), but a representation by a majority of the representatives of the territory which is to be separated in the Legislature of the State.

To prevent any anomaly and uncertainty I therefore suggest that article 3 will have to be recast and modified on the following lines :

For the existing proviso substitute :

Provided that no such law shall be made (in the place of 'a Bill shall not be introduced' to make it clear that the provision is mandatory and not procedural) or passed unless

(a) where such law affects any State in Part III the consent of the Ruler of such State and the Legislature of such State shall be obtained ;

(b) where any such law affects any State other than a State in Part III a representation in that behalf is made by the majority of the representatives of the Legislature.

In dealing with the article, while on the one hand it may be conceded that, having regard to the fact that the Provinces of India as at present constituted are not based on any constitutional principle and therefore an easy method of the realignment of States must be provided for, it is also necessary that some kind of fixity must be given to the different units consistently with the federal principle, as otherwise the area of the States will be in a state of perpetual flux. The power, if once exercised, is not even exhausted under the terms of this section.

If my suggestion is accepted that the representation must be by a majority of the members of the Legislatures of the States affected by the proposed law, then clauses (a) (ii) and (b) will be unnecessary.

In this connection it may be pointed out that there does not seem to be any point in merely providing for a representation of the majority of the representatives of the territory in clause (a) (i) and for obtaining the views of the Legislatures as a body in clauses (a) (ii) and (b).

If, for any reason, the above suggestion is not accepted, I would very much prefer the Draft as passed in the Constituent Assembly being retained, which is to the following effect:

The Parliament of the Union may, with the consent of the Legislature of every State whose boundaries are affected thereby, create etc., etc.

Further note by Alladi Krishnaswami Ayyar (March 25, 1948): While I agree that the amendment proposed by the Drafting Committee would meet the objection raised in regard to Part II States, there being no Legislatures functioning in those States, I do not think it will meet the other points which I have raised in my note sent yesterday. Having regard to the use of the expression 'State' in clause (a) (i) of the proviso, which, according to the scheme of the Constitution, takes in every kind of State, and the difference drawn between boundaries and new States in the opening words of the section, how can it be contended as a matter of reasonable or ordinary construction that article 3 (a) (i) excludes from its operation States in Part III ?

ARTICLE 4

B. Pattabhi Sitaramayya and others*: That in sub-clause (2) the following words be added at the end :

during a period of ten years from the coming into force of the Constitution.

Note: This amendment seeks to restrict the application of the procedure laid down in article 3 of the Draft to ten years from the commencement of the Constitution so that after the expiry of the said period of ten years any amendment of the First Schedule to the Constitution will have to be made by the procedure laid down in article 304 for the amendment of the Constitution. It is not clear why such a restriction is sought to be imposed. Under section 290 of the Government of India Act, 1935, which contains similar provisions, the revision of boundaries of any Province may be effected by an order of the Governor-General. Under sections 123 and 124 of the Commonwealth of Australia Constitution Act such revision of boundaries of States may be made by the Parliament of the Commonwealth by law passed in the ordinary manner and not in accordance with the procedure laid down for the amendment of the Constitution. This amendment need not therefore be accepted.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

FIRST SCHEDULE

Part I

L. N. Sahu : That the word "Utkal" be substituted for the word 'Orissa' in item 9 of Part I of the First Schedule.

Note : The Provinces are described in Part I by the name by which they would be respectively known immediately before the commencement of the Constitution. Accordingly, unless the name of Orissa is changed to Utkal before the commencement of the Constitution, the change proposed in item 9 of Part I of the First Schedule by this amendment cannot be given effect to. Article 3 of the Constitution provides for alteration of the name of any State after the commencement of the Constitution.

Harekrushna Mahatab : That the following proviso be added to Part I of the First Schedule :

Provided that the undermentioned Indian States which have ceded full and exclusive authority, jurisdiction and power to the Government of India shall be deemed to form part of the Governor's Province of Orissa (specify all the Orissa States).

Note : The Indian States which have ceded full and exclusive authority, jurisdiction and power to the Government of India and are being administered as if they form part of the Province of Orissa cannot be mentioned in Part I of the First Schedule as States actually forming part of Orissa unless they have first been annexed and then made part of the Province of Orissa before the commencement of the Constitution in accordance with the procedure laid down in section 290 of the Government of India Act, 1935. If those States are so made part of the Province of Orissa, then the mere reference to the territory known immediately before the commencement of the Constitution as the Governor's Province of Orissa in Part I would suffice to include such Indian States. This amendment is not therefore necessary.

Harekrushna Mahatab : That in Division 'B' of Part III of the First Schedule, after the words "Indian States", the following words shall be inserted, namely :

excluding the Indian States specified in the proviso to Part I :

and such other consequential amendments be made to the various articles of the new Constitution Act as may be required.

Note : This amendment is not necessary. If the Indian States referred to in this amendment are annexed and are then incorporated in the Province of Orissa in accordance with the procedure laid down in section 290 of the Government of India Act, 1935, before the passing of the Constitution, then they would not be named in Part III of the First Schedule. But if they are not so incorporated in the Province, but are merely administered as if they form part of the Province, then they would be named in that Part and the relevant provisions of the Constitution would apply for the purposes of their administration (*see article 212*).

K. Santhanam : That in Division B of Part III of the First Schedule, after the words "which were" the words "or were declared to be" be inserted.

Note : In Division B of Part III all States other than those mentioned in Division A of that Part which would accede to the new Union will be inserted. The words "All other Indian States which were within the Dominion of India immediately before the commencement of this Constitution" have been inserted as it is hoped that all the Indian States which have acceded to the Dominion of India would accede to the new Union and these words have been used merely to indicate that these States will be enumerated by name under Division B of Part III. The process envisaged by the Drafting Committee as regards the accession of the States to the new Union has been explained separately and it is intended that these States will be enumerated under Division B in Part III before the Constitution is finally adopted and when the States are so enumerated, the aforesaid words which have been used to indicate the States which will be enumerated under Division B of Part III will disappear. This amendment is therefore not necessary.

Boniface Lakra : That under Part I of the First Schedule for "5. Bihar" the following be substituted :

5. Bihar : the five districts of the Chhota Nagpur Division (*i.e.* Ranchi, Hazaribagh, Palamau, Manbhum and Singhbhum) and the district of Santhal Parganas as a sub-province or as an autonomous region.

Note : Part I of the First Schedule specifies the territories which were immediately before the commencement of the Constitution Governors' Provinces. This amendment seeks to mention in that Part that the five districts of the Chhota Nagpur Division (districts of Ranchi, Hazaribagh, Palamau, Manbhum and Singhbhum) and the district of Santhal Parganas in Bihar, shall form a sub-province or an autonomous region. The Draft Constitution does not contain any provision for the formation of sub-provinces or such autonomous regions in any State and their administration and no amendment of the Constitution to include such provision has been also suggested by the sponsor of this amendment. This amendment is therefore out of place.

3. Citizenship

ARTICLE 5

B. Pattabhi Sitaramayya and others* : That in article 5(a), for the words "who has not made his permanent abode in any foreign State after the first day of April, 1947", the following words be substituted :

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... who has not lost his domicile in India or has not become domiciled outside India after the 15th day of February, 1947.

Note: The term "permanent abode" rather than "domicile" has been used, for although 'domicile' is synonymous with "permanent abode" in India, we do not know if the terms are synonymous in the foreign State concerned. The foreign State may have, at least for citizenship purposes, an artificial definition of "domicile". Therefore, to avoid using a vague term, the term "permanent abode" has been used.

The date, April 1, 1947, has been chosen as the crucial date because according to the best of our information the exodus to what is now Pakistan did not begin before that date. In fact, H.M.G.'s plan creating Pakistan was not announced until June 3, 1947. It is not clear why the 15th of February, 1947, has been suggested as the crucial date in the proposed amendment.

This article has however been revised to give effect to the suggestions of the Special Committee and it is possible that this amendment may not be pressed if the revised draft is adopted.

B. Pattabhi Sitaramayya and others* : That in article 5(b), paragraph (ii) of Explanation, for the words "deposited in the office of the District Magistrate a declaration in writing of his desire to acquire such domicile and has resided in the territory of India for at least one month before the date of declaration" the following be substituted :

migrated to India after the first day of April, 1947, from any place outside India as defined in this Constitution and which formed part of India as defined in the Government of India Act, 1935 (as originally enacted).

Note: In the amendment proposed in clause (ii) of the Explanation to article 5, the expression "migrated" has been used. If by the proposed amendment, permanent migration is intended to be covered, then, irrespective of whether migration took place before or after April 1, 1947, the migrant is already covered by clause (i) of the Explanation. Presumably, therefore, only cases of temporary migration are intended to be covered by the proposed amendment. But would it be wise to allow every temporary migrant the rights of citizenship? Under clause (ii) of the Explanation, as it stands in the Draft Constitution, the migrant has to declare before a District Magistrate that he desires to acquire a domicile or fixed habitation in India and he must have resided for at least one month in India before making the declaration. Even these limitations may not be enough, but this amendment seeks to remove all limitations.

Article 5 has however been revised to give effect to the suggestions of the Special Committee and this amendment may not be pressed if the revised draft is adopted.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

Upendranath Barman : That in paragraph (a) of article 5, for the words "first day of April" the words "fifteenth day of August" be substituted.

Note : The date, the first day of April 1947, has been chosen as the crucial date because according to the best of our information the exodus to what is now Pakistan started in April 1947 and before the 15th August 1947.

K. Bhashyam (Member of the Madras Legislative Assembly) has proposed that in the matter of citizenship rights under clause (a) of article 5, there should be positive enactment to the effect that the citizens should have either permanent abode in India or must have the intention to reside permanently here.

Note : The Drafting Committee considered the question of citizenship of the Union at length and came to the conclusion that in order to be a citizen of the Union at its inception a person must have some kind of territorial connection with the Union whether by birth, descent or domicile. The sponsor of this proposal wants to impose the domicile qualification as a condition precedent to the acquisition of citizenship in every case and his intention seems to be to exclude those persons who, or either of whose parents or any of whose grandparents, were born in India, but who have made their permanent abode in any country outside India. Clause (a) of article 5 however excludes such of those persons who have made such permanent abode after the first day of April 1947. This date has been chosen as the crucial date because according to the best of our information the exodus to what is now Pakistan did not begin before that date. If this proposal is accepted *in toto* then a person, who, or either of whose parents or any of whose grandparents, was in India and who is staying in any country outside India but has not acquired the citizenship of such country will be left out. We have already received representations from Indians staying in foreign countries for conferring on them the rights of citizenship of India under the Draft Constitution.

The West Bengal Legislative Assembly has proposed that in article 5, sub-clauses (i) and (ii) of the "Explanation" appended to clause (b) be omitted, and in their place the following be inserted :

A person may acquire his domicile contemplated in clause (b) above if--

(i) he has a fixed habitation in the territory of India as defined in the Constitution, or

(ii) he has made and deposited in some office or with some officer in the territory of India as defined in the Constitution appointed in this behalf by the Provincial Government a declaration in writing under his hand of his desire to acquire such a domicile, provided that he has been a resident of the territory of India for at least one month before the date of declaration.

Note : The object of this amendment is to omit the reference to the Indian Succession Act, 1925, from clause (i) of the Explanation to article 5. It has been suggested to insert in place of clause (i) of the Explanation the provision in section 10 of the Indian Succession Act, 1925, that a man

acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile or origin. The object of the existing clause (i) of the Explanation is to apply all the provisions of Part II of the Indian Succession Act, 1925, to the determination of the domicile of a person for the purpose of clause (b) of article 5 and the reference to the Indian Succession Act, 1925, was inserted in clause (i) only to avoid the repetition of a large number of provisions with regard to domicile in that Part. If the present amendment is accepted, then the provisions in Part II of the Indian Succession Act, 1925, that the domicile of a minor follows the domicile of the parent, or that the wife's domicile during her marriage follows the domicile of her husband will not apply for the purposes of clause (b) of article 5.

The new clause (ii) of the Explanation proposed by this amendment is virtually the same as the existing clause (ii) of the Explanation except that the reference to the District Magistrate has been replaced by a reference to an officer appointed in this behalf by the Provincial Government. The reason for such change appears to be that the District Magistrate will not be easily approachable for the purpose of depositing the declaration referred to in that clause. Under the new Constitution there will not be any Provincial Government, but such Government would be Government of a State mentioned in Schedule I to the Draft Constitution. We can hardly refer to the Government of a State in this clause as such Government will not come into being until the Constitution comes into operation. The object of the amendment will be met if in clause (ii) of the Explanation to article 5 the following amendment is made :

In clause (ii) of the Explanation to article 5, after the words "District Magistrate", the words "or of such officer as may be authorized in writing in that behalf by the District Magistrate" be inserted.

The Editor of the Indian Law Review and some other members of the Calcutta Bar offered the following criticisms on article 5 :

(1) The definition of citizenship in article 5 is narrow. It does not include persons who were born or have a fixed habitation in Pakistan but have spent their lives in India in the pursuit of their profession, calling or vocation because "domicile" as defined in the Explanation to section 10 of the Indian Succession Act excludes such persons.

(2) Article 5 also denies Indian citizenship to persons who have acquired foreign citizenship by operation of the law of a foreign State independently of their volition or choice.

(3) The reference to the Indian Succession Act in the Explanation to this article is not happy. The Constitution Act should be self-contained. Supposing the Indian Succession Act, 1925, is repealed, it may necessitate research and investigation to find out the meaning of the word "domicile". This is not desirable.

In the light of the above criticisms they have suggested that article 5

should be redrafted as follows :

5. At the date of the commencement of this Constitution every person who or either of whose parents or any of whose grandparents was born in India, as defined by the Government of India Act, 1935, or as defined in this Constitution, or in Burma or Ceylon or Malaya, shall be a citizen of India :
Provided that—

- (i) he is not domiciled in a foreign State, or
- (ii) he is not a citizen of a foreign State, or
- (iii) being a citizen of, or domiciled in, a foreign State by the operation of any foreign law, he has renounced such foreign citizenship or domicile by declaration as hereinafter mentioned.

Explanation I : A person shall not be deemed to be domiciled in a foreign State—

- (a) If he makes a declaration in writing that he desires to reside in India, that he had resided in India for at least...years before the date of such declaration and that he has renounced his foreign domicile, if any, and deposits such declaration in the office of a District Magistrate, or
- (b) if he has taken up fixed habitation in India, or
- (c) if he has resided in India for a period of at least...years and has been in the civil, military, naval or air force service of the Dominion of India or of the States or Provinces in India or has been exercising any profession or calling or vocation in India.

Explanation II : The declaration necessary for renouncing foreign citizenship shall be in writing and shall be deposited in the office of a District Magistrate and shall state that the declarant did not acquire foreign citizenship of his own accord and that he desires to remain a citizen of India.

Explanation III : If the declarant is a minor, the declaration may be made on his behalf by any of his parents or other guardian.

Note : With regard to (1) above, attention is invited to paragraph 4 of the letter of the Chairman of the Drafting Committee to the President of the Constituent Assembly in which it is stated that the committee has thought it necessary that in order to be a citizen of the Union at its inception a person must have some kind of territorial connection with the Union, whether by birth or descent or domicile. Persons who were born or have a fixed habitation in Pakistan but have spent their lives in India in the pursuit of their profession, calling or vocation can only be treated as citizens of the Union at its inception if they have some kind of territorial connection with the Union by domicile. If there is any doubt as to whether such persons have made their fixed habitation in India as defined in the Constitution and have thereby acquired a domicile under section 10, Part II, of the Indian Succession Act, 1925, which has been made applicable to them by clause (i) of the Explanation to article 5, they may avail themselves of the easy mode of acquiring a domicile in India as provided in clause (ii) of the Explanation to that article. All that such persons have to do is to make and deposit

in the office of the District Magistrate a declaration in writing of their desire to acquire such domicile. Article 5 thus does not exclude such persons.

With regard to (2), it may be pointed out that this objection has been met by the insertion of the word "voluntarily" before the word "acquired" in the revised draft of article 5 recommended by the Drafting Committee.

With regard to (3), it may be pointed out that the reference to the Indian Succession Act, 1925, has been found necessary to avoid the repetition of a large number of provisions with regard to domicile contained in Part II of that Act. Such a reference is not altogether uncommon in a Constitution Act [cf. the reference to the Code of Civil Procedure, 1908, in sub-sections (1) and (3) of section 271 of the Government of India Act, 1935; the definition of agricultural income in sub-section (2) of section 311 of the Government of India Act, 1935; the references to the various Indian Acts in Parts II to XI of the Sixth Schedule to the said Act]. Even if the Indian Succession Act, 1925, is repealed, it will not be difficult to find out what the provisions thereof were on the date of commencement of the Constitution.

The redraft of article 5 suggested by the Editor of the Indian Law Review is open to the following objections :

- (i) It does not *ipso facto* confer citizenship on every person who or either of whose parents or any of whose grandparents was born in India but who is on the date of commencement of the Constitution staying in a place like Burma, Ceylon, Malaya or Pakistan in the pursuit of his profession, calling or vocation and has not acquired the citizenship of such foreign State.
- (ii) It would necessitate the making of two declarations, one under clause (a) of Explanation I to the proposed article and another under Explanation II to that article, in the case of refugees from Pakistan, if Pakistan meantime makes any provision that every person born in Pakistan will be a citizen of Pakistan. Further, if a long period is prescribed in clause (a) of Explanation I to that article as the qualifying period for residence in India the result will be that Indian citizenship will be denied to a large number of such refugees.

The redraft of article 5 which has been suggested by the Drafting Committee to give effect to the recommendation of the Special Committee is simpler and more comprehensive than the new article 5 proposed.

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that in the Explanation to article 5, for the portion commencing with the words "For the purposes of clause (b)" and ending with the words "had the provisions of that Part been applicable to him, or" the following should be substituted :

For the purposes of clause (b) of this article, a person shall *also* be deemed to have his domicile in the territory of India—

(1) if he resided permanently in the territory of India for a period of not less than 5 years before the date of commencement of this Constitution, or
He has pointed out that section 10 (Explanation) of the Indian Succession

Act, 1925, prevents the Indian domicile of persons whose domicile of origin was outside the present India but who were residents for a long time in what is now India and desire to continue to reside therein. He is also opposed to any reference being made in the Constitution Act to a piece of legislation like the Indian Succession Act, 1925, which is liable to be amended or repealed any day.

Note : The new clause (i) suggested by Gupta for substitution for the existing clause (i) of the Explanation does not give any definition of domicile for the purposes of clause (b) of article 5 but merely suggests an additional mode of acquiring domicile for the purposes of that clause. The reference to the Indian Succession Act, 1925, has been considered necessary to avoid the repetition of a large number of provisions with regard to domicile contained in Part II of that Act.

The revised draft of article 5 suggested by the Drafting Committee will enable persons about whom there may be doubt as to whether they have taken up their fixed habitation in India as defined in the Constitution and have thereby acquired a domicile under section 10, Part II of the Indian Succession Act, 1925, which has been made applicable to them by the Explanation to clause (1) of article 5, to avail themselves of the easy mode of acquiring a domicile in India as provided in sub-clause (b) of clause (2) of that article as revised.

Captain R. V. Brockman (Private Secretary to Mountbatten) enquires how the provision in the citizenship clause would square up with the principles of the British Commonwealth citizenship, legislation regarding which is now before the Parliament, in case India remains within the Commonwealth. He also points out that a significant omission is the absence of a provision for citizenship by acceptance of jurisdiction, which most other citizenship laws provide for, and refers to the case of Indians in South Africa.

Note : So far, the citizenship clause has been drafted without any reference to any British Commonwealth Law of Citizenship. Apparently the British statute would itself provide for cases like India, whether it chooses to remain within or outside the Commonwealth. The article as drafted is not intended to be the entire law on the citizenship of India. Further provisions are to be made by the Indian Parliament as early as possible.

Justice Meredith of the Patna High Court : The Draft leaves the position of Europeans like myself who might wish to take out Indian citizenship very uncertain. I suggest that some provisions for naturalization should be inserted in the Constitution. I believe every country has provisions for naturalization in proper cases, and all security for fundamental rights under the Constitution is provided only as regards citizens of India. There is no constitutional protection for persons permanently resident in the country or having their domicile therein who are not citizens. Moreover, citizenship appears to have been made an essential qualification for practically every appointment under the Union of India.

Note : The point raised by Justice Meredith was considered at a meeting of the Drafting Committee. As a result of the discussion it was decided to amend the article in the following manner :

At the date of commencement of this Constitution :

- (a) every person who or either of whose parents or any of whose grand-parents was born in the territory of India, and
- (b) every person who has his domicile in the territory of India, shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign country.

Explanation : For the purposes of clause (b) of this article, a person shall be deemed to have his domicile in the territory of India if he would have had his domicile in such territory under Part II of the Indian Succession Act, 1925, had the provisions of that Part been applicable to him.

In a letter to Rajendra Prasad dated April 13, 1948, B. N. Rau said : Clause (b) of this article will apply to persons like Justice Meredith. All such persons who have taken up their fixed habitation in India shall be deemed to have their domicile in India under section 10 in Part II of the Indian Succession Act, 1925, which is made applicable to them by the Explanation to this article. At the meetings of the Special Committee held on the 10th and the 11th it was decided that separate provision should be made regarding the acquisition of citizenship by persons affected by the partition of India.

The All-Burma Indian Congress urges that every Indian resident in Burma who was an Indian according to the pre-division period should have the option of choosing whether he would like to be a citizen of the Indian Union or of Pakistan and that the exercise of this option should be automatic on making a declaration and should not be hedged round by other qualifications.

It further urges that the Government of India should accord the above stated right to those overseas Indians who were born in what is now known as the Pakistan territory and who would like to change over.

It also urges that for those Indians resident in Burma who take up Burma citizenship and later want to re-acquire Indian citizenship, an easier process of re-acquisition of Indian citizenship may be prescribed.

Note : The comments of the All-Burma Indian Congress were made on February 20, 1948, and could not therefore have been directed against the provision in the present Draft, which was published on February 26, 1948. Actually the Draft meets them to a large extent. Any person born in what is now India or the son or grandson of any such person is a citizen of India under clause (a) of article 5, provided—

- (1) that he has not made his permanent abode in Burma from a date subsequent to April 1, 1947;
- (2) that he has not voluntarily acquired Burma citizenship.

This should cover most of the persons whom the All-Burma Indian Congress has in mind. So far as persons born in what is now Pakistan (or the sons or grandsons of such persons) are concerned, they are citizens of

India under clause (b) of the article, provided that they have their domicile in what is now India. The reason for imposing this condition has been explained in the Chairman's letter to the President (*See* Vol. III, Doc. 6). Unless a person is connected with the territory of India as defined in the Constitution, either by birth or descent or domicile, it would hardly be appropriate to make him a citizen of India at the inception of the Union.

Drafting Committee : That the following be substituted for article 5 :

5. (1) At the date of commencement of this Constitution—

(a) every person who or either of whose parents or any of whose grandparents was born in the territory of India, and

(b) every person who has his domicile in the territory of India, shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

Explanation : A person shall be deemed to have his domicile in the territory of India if he would have had his domicile in such territory under Part II of the Indian Succession Act, 1925, had the provisions of that Part been applicable to him.

(2) For the purposes of clause (1) of this article—

(a) a person shall not be deemed to be a citizen of India if he has taken up his fixed habitation after the first day of April, 1947, in any territory outside India as defined in this Constitution ;

(b) a person who has migrated to India as so defined from any other territory shall, notwithstanding anything contained in section 11 of the Indian Succession Act, 1925, be deemed to have acquired a domicile in the territory of India if he has before the date of commencement of this Constitution deposited in the office of the District Magistrate a declaration in writing of his desire to acquire such domicile and has resided in the territory of India for at least one month before the date of the declaration.

Note : Article 5 as in the Draft Constitution is open to the following criticism :

(1) Clause (b) of this article leaves out persons who were born in Pondicherry, Goa, Chandernagore or other foreign territory in India or were born in South Africa, Fiji or other countries outside India but are domiciled in the territory of India as defined in the Constitution. There is no good reason why such persons should be less favourably treated than those born in Pakistan or Burma. The words "who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted) or in Burma, Ceylon or Malaya, and" may therefore be omitted from clause (b).

(2) "Acquired" is slightly ambiguous. For avoiding doubt we may say "voluntarily acquired" instead of "acquired", *cf.* the language of section 13 of the British Nationality and Status of Aliens Act, 1914 :

A British subject who when in any foreign State and not under disability, by obtaining a certificate of naturalization, or by any other voluntary

and formal act, becomes naturalized therein, shall thenceforth be deemed to have ceased to be a British subject.

With the above modifications, article 5 would stand thus :

5. At the date of commencement of this Constitution—

(a) every person who or either of whose parents or any of whose grandparents was born in the territory of India and who has not made his permanent abode in any country;

(b) every person who has his domicile in the territory of India;

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign country.

Explanation : (As in the existing draft).

As regards the acquisition of domicile by displaced persons, it may be pointed out that a declaration before a magistrate is not indispensable for acquiring citizenship : it is only one of the modes of proving acquisition of domicile. Even if such a person does not make the declaration, he may be able to prove by other means that, as a matter of fact, he had made his fixed habitation, and thereby acquired a domicile, in India under section 10 in Part II of the Indian Succession Act, 1925, which is made applicable to him by paragraph (i) of the Explanation to this article. The mere absence of a declaration will not preclude other modes of proof; the declaration is merely intended to provide a specially easy mode for those who wish to avail themselves of it.

As regards the mode of acquisition of citizenship after the commencement of the Constitution, this has been left to be provided by Parliament by law under article 6.

The Drafting Committee accepted the redraft proposed above.

The Special Committee was of the view that article 5 as proposed to be redrafted by the Drafting Committee should be divided into two parts, one dealing with cases of general application and the other dealing with persons who have left India with the intention of taking up their fixed habitation in other countries or who have migrated to India from other countries for taking up such habitation in India. The committee was accordingly of opinion that in the redraft of article 5 recommended by the Drafting Committee, the words "and who has not made his permanent abode in any foreign country after the first day of April 1947" should be omitted from clause (a), and clause (ii) of the Explanation should be also omitted, and that a separate provision dealing with persons who have left India with the intention of taking up their fixed habitation outside India or who have migrated to India and have taken up such habitation there should be made.

It is accordingly proposed to redraft the article as shown under the Drafting Committee's amendment above.

Note by Alladi Krishnaswami Ayyar : I am not in favour of the drastic change proposed in clause (b) of article 5 though I am quite willing to add any other places to Burma, Ceylon and Malaya. My chief objection is that

such a conception of citizenship especially with the wide definition of domicile under the Indian Succession Act will square neither with the Anglo-American conception of citizenship nor with the continental conception. While the exigencies of the Indian political situation might make it necessary to introduce some qualifications into these conceptions, we need not go to the other extreme. The merit of the present clause is that while retaining the birth-test, it emphasizes the connection with India as under the Constitution as an essential condition.

I am not for the addition of the word "voluntarily" to "acquired".

The other criticisms from various quarters have been sufficiently answered in the note by the Constitutional Adviser.

The Drafting Committee considered the question of uniform citizenship most carefully and arrived at the conclusion embodied in the draft articles and there is no need for any change. The Indian States had never a nationality law and it was merely a domicile law. In foreign countries in British territories, Indian State subjects came under the category of British protected persons and the protection was afforded by reason of the fact that the States had no voice in the conduct of foreign affairs. Now, since foreign affairs is ceded by all acceding States, they have to be protected abroad by the Indian Government. Since they have conceded the right to the Indian Legislature to pass laws extending to their territory, there is nothing incongruous in there being a unified citizenship. Moreover, any modification in this regard would affect the chapters relating to fundamental rights which have been passed with the assent of every one. Hence, this objection should not be considered at all.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment in the form proposed by the committee above.

4. *Fundamental Rights*

ARTICLE 7

B. Pattabhi Sitaramayya and others*: That the following words be added at the end of article 7:

or under the control of the Government of India.

Note: It is not clear what authorities are intended to be covered by the proposed amendment. Probably Embassies or the like. The amendment may be accepted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor this amendment.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

ARTICLE 8

Note : It has been pointed out by a critic that clause (2) of article 8 may be held as a bar to the amendment of the provisions of the Constitution relating to fundamental rights by a law passed under article 304 and it should, therefore, be made clear that there is no restriction on the power of Parliament to amend such provisions under article 304.

Clause (2) of article 8 does not override the provisions of article 304 of the Constitution. The expression "law" used in the said clause is intended to mean "ordinary legislation". However, to remove any possible doubt, the following amendment may be made in article 8 :

In the proviso to clause (2) of article 8, after the words "nothing in this clause shall" the words "affect the provisions of article 304 of this Constitution or" be inserted.

Drafting Committee : That in the proviso to clause (2) of article 8, for the words "existing law" the words "grant or contract" be substituted.

Note : Comments have been made that the proviso to clause (2) of this article enabling the State to make laws removing existing discrimination, is likely to create confusion. This proviso has been inserted merely by way of abundant caution for the reasons explained in the foot-note on article 8 of the Draft.

It has also been brought to the notice of the Drafting Committee that there are some grants or contracts under which a class of persons still enjoys an undue advantage and it might be necessary to make laws for removing such discrimination. The committee therefore considered this proviso to be necessary as it would enable the State to make laws removing any such existing discrimination. The committee was, however, of the view that in the said proviso for the words "existing law" the words "grant or contract" should be substituted to make the intention clearer.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

Drafting Committee : That for clause (3) of article 8, the following clause be substituted :

(3) In this article—

(a) the expression 'law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof ;

(b) the expression 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Note : The expression "laws in force" has been used in clause (1) of article 8, but it is not clear if a law which has been passed by the Legislature

but which is not in operation either at all or in particular areas would be treated as a law in force so as to attract the operation of clause (1) of this article. It is accordingly suggested that a definition of "law in force" on the lines of Explanation I to article 307 should be inserted in clause (3) of this article.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

NEW ARTICLE 8-A

G. S. Gupta : That after article 8, the following new article be inserted :

8-A. The official language—

(i) of the Union shall be Hindi, and

(ii) of every other State shall be such regional language or languages as may be determined by the Legislature of each State :

Provided that for a period of seven years from the commencement of this Constitution the English language shall be recognized as the second official language of the Union and of every other State.

Note : The new article proposed by G. S. Gupta involves questions of policy.

ARTICLE 9

B. Pattabhi Sitaramayya and others* : That the word "only" wherever it occurs be deleted.

Note : The wording used is in section 298 (1) of the Government of India Act, 1935.

There are advantages in retaining this wording. For example, suppose, because of discrimination against Indians in South Africa, India decides to discriminate against South African Europeans in India. Such discrimination would be on grounds of race, but not on grounds only of race; the Draft Constitution, as it stands, would permit it, but not if it is amended as proposed.

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in the second paragraph of clause (1) of article 9, after the words "or any of them" the words "have any privileges or rights or" be inserted.

Note : This amendment is hardly necessary. If any citizen has any special privilege or right with regard to any of the matters specified in sub-clauses (a) and (b) of clause (1) of article 9, then every citizen who has no such privilege or right will necessarily be subject to a disability or restriction with regard to the enjoyment of such privilege or exercise of such right. So the existing provision will exclude the enjoyment of such special

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

privileges or the exercise of such special rights and it is not necessary to provide specifically for such exclusion.

Guptanath Singh : That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the words "wells, tanks" the words "bathing ghats, kunds," be inserted.

Note : If "bathing ghats" and "kunds" are regarded as sufficiently important to deem special mention in the Constitution, the amendment may be accepted.

R. K. Sidhva : That the following Explanation be added to clause (1) of article 9 :

Explanation : The word 'public' expressed in sub-clause (b) of clause (1) would include any class of the public or any community as defined in section 12 of the Indian Penal Code. This means that 'public' has a restricted meaning. In this clause 'public' would mean all classes irrespective of any community, race, caste or creed and therefore the interpretation of section 12 of the Indian Penal Code should not be applicable to this clause.

Note : The Explanation sought to be added to clause (1) of article 9 by this amendment is not sufficiently clear. The word "public" has not been defined in this clause and accordingly the word will have its ordinary dictionary meaning. The definition of the word "public" in section 12 of the Indian Penal Code will not apply to this clause. The word "public" therefore means all classes of the public irrespective of any community, race, caste or creed and no Explanation is necessary.

Tajamul Husain : That in sub-clause (a) of clause (1) of article 9, between the words "public" and "restaurants" the words "places of worship, Dharamshalas, Musafarkhanas," be inserted.

Note : The reference to "public places of worship" can hardly be included in sub-clause (a) of clause (1) of article 9 unless the word "public" has a restricted meaning, namely, a section of the public, for obviously it would be open to objection to throw open Hindu temples of a public character to Muslims or Christians and Muslim mosques of a public character to non-Muslims. The rights in respect of access to such places have been dealt with in article 19 of the Draft Constitution.

The inclusion of references to *Dharamshalas* and *Musafarkhanas* in sub-clause (b) of clause (1) of article 9 is hardly necessary as the expression "places of public resort" would cover them. This amendment is not therefore necessary.

Shrimati Purnima Banerji : That in sub-clause (b) of clause (1) of article 9, after the word "roads" the words "schools and educational institutions" be inserted.

Note : Discrimination in regard to admission into the educational institutions maintained by the State has been dealt with in clause (2) of article 23 of the Draft Constitution. This amendment is not therefore necessary.

Upendranath Barman : That the first paragraph of clause (1) of article 9

be numbered article 9 and the rest of the article be numbered article 9-A. In article 9-A so formed, the words "In particular" at the beginning be deleted and the words "discrimination" and "and public worship" be inserted after the words "liability" and "public resort" respectively.

Note : The first paragraph of clause (1) of article 9 prohibits generally all discrimination on grounds only of religion, race, caste, sex or any of them. The second paragraph of that clause deals with particular classes of discrimination. It would therefore be inappropriate to divide the said two paragraphs into two distinct articles. The words "In particular" at the beginning of the second paragraph of clause (1) of this article should therefore be retained.

It is not necessary to insert the word "discrimination" after the word "liability" in the second paragraph of clause (1) of this article as "disability, liability, restriction or condition" denote different kinds of discrimination.

The reference to "places of public worship" in sub-clause (b) of clause (1) of this article is not necessary as rights in respect of use of such places have been dealt with in sub-clause (b) of clause (2) of article 19 of the Draft Constitution.

Tajamul Husain : That clause (2) of article 9 be deleted.

Note : Clause (2) of article 9 follows the recommendation of the Advisory Committee on Fundamental Rights as adopted by the Constituent Assembly. This clause is necessary as obviously special provision would be required in the case of employment of women and children in factories and mines, and if this clause be omitted, such a provision would not be permissible.

Jaya Prakash Narayan : The following sub-clause should be added to clause (1) of article 9 :

(c) possession of property, exercising or carrying on any occupation, trade, business or profession within the Republic.

Note : The right to acquire and hold property and the right to practise any profession and to carry on any occupation, trade or business have been guaranteed under article 13 subject to the restrictions which may be imposed on the exercise of such rights as specified in clauses (5) and (6) of that article.

In the case of possession of property such restrictions may be imposed either in the interests of the general public or for the protection of the interests of any aboriginal tribe. In fact various disabilities and restrictions have been imposed with regard to the possession of property by certain classes of aboriginal tribes in the interests of such tribes (*e.g.* in the Bengal Tenancy Act, 1885) and these disabilities and restrictions may very well be held to be disabilities or restrictions on the ground of race or caste. Further, under the Hindu Law there are certain disabilities with regard to the possession of property on the ground of sex.

In the case of the practising of any profession or the carrying on of any

trade or business, such restrictions may be imposed in the interests of public order, morality or health. It may, for example, be necessary to impose restrictions on the carrying on of certain occupations by women such as the occupation of rickshaw-puller, the occupation of labourer in mines, etc.

The amendment, if accepted, will not enable the State to impose any such restrictions. The amendment cannot therefore be accepted.

Drafting Committee : That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words "the revenues of the State" the words "State funds" be substituted.

Note : In sub-clause (b) of the second paragraph of clause (1) of article 9, the words "the revenues of the State" have been used. The expression "the State" as used in this article includes all local or other authorities in view of the definition contained in article 7. It is unusual to speak of "revenues" in relation to a local authority. It is accordingly suggested that for the words "the revenues of the State" in the said sub-clause the words "State funds" be substituted.

The expression "State funds" also occurs in article 22.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

NEW ARTICLE 9-A

Thakurdas Bhargava and Govind Das : That the following new article be inserted after article 9:

9-A. The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and in particular take steps to preserve, protect and improve useful breeds of cattle and ban the slaughter of the cow and other useful cattle, specially milch cattle and of child-bearing age, young stock and draught cattle.

Note : The new article 9-A sought to be inserted by this amendment would more appropriately be included in the Part containing the Directive Principles of State Policy. This amendment, however, involves a question of policy. Even if it is accepted in substance, the language of the amendment would require to be revised.

ARTICLE 10

Thakurdas Bhargava and Govind Das : That to clause (1) of article 10, the following be added:

and in exercise of the right of franchise, no citizen shall be debarred from the exercise of his vote and free choice in the election of representatives and from standing for any representative seat in any Legislature on the ground of religion, race, caste or sex or any of them.

Note : Franchise has been dealt with specially in article 67(6) and article

149(2), and adult suffrage subject to certain conditions has been prescribed. It is therefore not necessary to deal with the subject again in article 10 which is limited to matters of employment under the State. This amendment was considered by the Drafting Committee but was not agreed to for the above reason.

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in clause (3) of article 10, after the words "or posts in favour of any" the words "economically or culturally" be inserted.

Note : The Drafting Committee suggested the insertion of the word "backward" before the words "class of citizens" without any further qualification. The expression used in article 37 is "socially and educationally backward classes". There is no great objection to the amendment except that it is perhaps unnecessary.

T. A. Ramalingam Chettiar : That in clause (3) of article 10 the word "backward" be deleted.

The Madras Legislative Council also suggested that in clause (3) of article 10 the word "backward" should be omitted.

Note : If the word "backward" be omitted from clause (3) of article 10 then it will be open to a State to reserve appointments or posts in favour of any class of citizens who are not adequately represented in the services under the State. It is for the Constituent Assembly to decide whether the scope of this clause should be so extended.

Thakurdas Bhargava and Govind Das : That the following new clause be added at the end of article 10 :

(5) Nothing in this article shall however prevent the State from making any provision for reservation of any seats for any particular community (according to the proportion of their number to the population of the General constituency) for a limited period by nomination by the Head of the State.

Note : Membership of the Legislature is not "employment or office under the State" and hence reservation of seats in the Legislature cannot be said to be a breach of the provisions of article 10 as it stands at present. This amendment is not therefore necessary. The Drafting Committee did not agree to this amendment.

Upendranath Barman : That in clause (3) of article 10, after the words "in favour of" the words "the Scheduled Castes or" be inserted.

Note : This amendment involves a question of policy.

It may be pointed out that the Advisory Committee on the subject of Minority Rights in their report which was adopted by the Constituent Assembly during August 1947 session did not recommend any reservation of posts for the Scheduled Castes in the all-India and provincial services.

Shrimati Purnima Banerji : That the following be added at the end of clause (4) of article 10 :

Provided that such a religious or denominational institution is not aided or run by the State.

Note: This amendment also involves a question of policy. It is doubtful if it will be possible to do away with the appointment of persons professing a particular religion or belonging to a particular denomination in the case of an office in connection with the affairs of any religious or denominational institution even if such institution is maintained wholly or partly out of State funds. If the State maintains a Muslim mosque or a Hindu temple it may be necessary to provide that the Imam of the mosque shall be a Muslim or the priest of the temple shall be a Hindu. However, if it is decided to accept this amendment, then it should be redrafted as follows:

In clause (4) of article 10, after the words "denominational institution" the words "not maintained either wholly or partly out of State funds" be inserted.

Atul Chandra Gupta (Advocate, Calcutta High Court) suggested that in clause (3) of article 10 after the words "shall prevent the State" the words "for a period of fifteen years from the commencement of this Constitution" should be added, for care should be taken against growth of vested interest in 'backwardness', and 'backwardness' has to be banished and not perpetuated and 15 years should be sufficient for the purpose.

Note: This amendment involves a question of policy.

ARTICLE 11

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in article 11 after the word "untouchability" the words "i.e., the custom which taboos the touch of a person or his belongings because he is born in a particular caste or belongs to a particular religion" be inserted.

Note: This amendment seeks to define "untouchability". It would be difficult to define "untouchability" precisely. Under article 11 the practice of untouchability in any form is forbidden. The law which has to be enacted under article 27 for prescribing punishment for offences in respect of untouchability will define the various forms in which it is practised. It would therefore be better not to attempt to define the expression in the Constitution.

S. Nagappa : That in the first line of article 11, for the word "untouchability" the words "untouchability as defined by the State" be substituted.

Note: As already pointed out, the law prescribing punishment for offences in respect of untouchability will define the various forms in which untouchability is practised. This amendment is not necessary.

Several representations have been received containing criticism that article 11 as drafted is very wide as it forbids the practice of untouchability in any form. It has been pointed out in the representations that apart from "communal" untouchability, which is objectionable, there is another form of untouchability in religious matters, for example, on occasions like births, deaths, etc.

Parliament will have to enact auxiliary legislation under article 27 and that legislation will doubtless attempt a definition of "untouchability".

ARTICLE 12

R. K. Sidhva : That in clause (3) of article 12, the word "title" be deleted.

Note : This amendment appears to be based on a misunderstanding of the article. Clause (2) forbids any citizen of India to accept any title from a foreign State and the prohibition is absolute. But what about a citizen of a foreign State who, let us say, is temporarily employed by India? Supposing his own State desires to honour him with a title for services rendered before he came to India, may he or may he not accept the title? Clause (3) deals with this point: he may accept the title with the consent of the President. Or, again, suppose a citizen of India is offered a prize by a foreign State for his contribution to literature or science; this is not covered by clause (2) but by clause (3). There is no inconsistency between the two clauses.

Tajamul Husain : That clauses (2) and (3) of article 12 be deleted and the following be inserted in their place:

(2) No citizen of India shall accept any present, emolument, title or office of any kind from or under any foreign State.

Note : If this amendment is accepted, then a citizen of India, if he is offered a prize by a foreign State for his contribution to literature or science or is offered a chair in respect of an oriental language in any foreign university, will be prohibited from accepting such prize or office. The prohibition in clause (2) of article 12 was accordingly restricted to the acceptance of any title from any foreign State. Further, clause (2) of article 12 as proposed in this amendment will not cover the case of a person who is a citizen of a foreign State but is temporarily employed in India. Supposing his own State desires to honour him with a title for services rendered before he came to India, may he or may he not accept the title? Clause (3) of the existing article 12 deals with this point. He may accept the title only with the consent of the President.

This amendment can hardly, therefore, be accepted.

Drafting Committee : That for clause (1) of article 12 the following clause be substituted :

(1) Hereditary titles or other privileges of birth shall not be conferred by the State.

Note : Presumably it is not intended that titles such as "Field Marshal", "Admiral", "Air Marshal", "Chief Justice" or "Doctor" indicating an office or profession, should be discontinued. It may be pointed out that the term "State" as defined in article 7 might conceivably include universities, since the definition includes "all local or other authorities within the territory of India". Nor, presumably, is it intended to prohibit the award of medals

or decorations for gallantry, humanitarian work, etc., not carrying any title.

The Drafting Committee was of the view that for clause (1) of article 12 the following clause should be substituted :

(1) Titles or other privileges of birth shall not be conferred by the State.

The Special Committee further amended it as shown in the Drafting Committee's amendment prefixing the word "hereditary".

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment in the terms proposed by it.

ARTICLE 13

R. K. Sidhva : That at the end of each of the sub-clauses (a), (b), (c) and (g) of clause (1) of article 13, the words "throughout the territory of India" be inserted.

Note : The reference to the territory of India in sub-clauses (d) and (e) of clause (1) of article 13 is necessary because without such reference those sub-clauses would be meaningless. In the remaining sub-clauses of clause (1) of that article such reference is not necessary as in the absence of any restrictive provision the right conferred by those clauses will extend throughout the territory of India. This amendment is not therefore necessary.

B. Pattabhi Sitaramayya and others* : That for clause (2) of article 13 the following be substituted :

Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, offences against decency or morality or sedition or other matters which undermine the security of the State.

Note : The Special Committee considered this amendment and suggested that clause (2) of article 13 should be retained in its present form with the substitution of the word "security" for the word "authority".

B. Pattabhi Sitaramayya : That in clause (4) of article 13 the words "the general" be omitted and after the word "public" the words "safety, peace, and tranquillity" be inserted.

Note : The Special Committee also considered this amendment and suggested that in clause (4) of article 13 for the words "in the interests of the general public" the words "in the interests of public order or morality" should be substituted.

B. Pattabhi Sitaramayya and others* : That in clause (5) of article 13 for the words "State" and "aboriginal" the words "Parliament" and "scheduled" respectively be substituted.

Note : This amendment seeks to confer power only on the Union Parliament to impose the restrictions referred to in clause (5) of article 13. Such restrictions may have to be imposed on persons detained in prison or in

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

mental hospitals, on criminal tribes, etc. "Prisons" is a subject in the State List (entry 5 of List II); "mental hospitals" and "nomadic and migratory tribes" are in the Concurrent List (entries 19 and 24); so the power to impose such restrictions by legislation cannot properly be taken away from the units. Again, Provincial Acts have in the past imposed restrictions (for example, the Bengal Tenancy Act, 1885) in the interest of aborigines. Should the Provincial Legislatures be prevented from exercising such powers in future?

The amendment also seeks to substitute the word "scheduled" for the word "aboriginal" in the said clause. "Scheduled Tribe" instead of "aboriginal tribe" would be more specific and better. This part of the amendment may therefore be accepted.

B. Pattabhi Sitaramayya and others* : That in clause (6) of article 13 for the words "public order" the words "the general public" be substituted.

Note : This amendment seeks to replace the words "public order" in clause (6) of article 13 by the words "the general public", the very phrase which has been sought to be omitted from clause (4) of article 13. The words "public order" have been used in the Draft because the carrying on of certain occupations in certain localities may have to be prohibited or restricted in the interests of public order : e.g., the sale of meat in the vicinity of a temple. The words "in the interests of the general public" are wider in scope and if the amendment is accepted, the whole phrase "public order, morality, or health" may be omitted. On the whole, the amendment seems unnecessary.

Thakurdas Bhargava and Govind Das : That to article 13, the following new clause be added :

(7) Nothing in sub-clause (h) shall affect the operation of any law imposing disqualifications on the ground of age, citizenship, or residence, unsoundness of mind, crime or corrupt or illegal practice on the right of voting, or on the ground of age, holding an office of profit, unsoundness of mind, solvency, or inheritance of citizenship of a foreign power, non-residence, crime or corrupt or illegal practice on the right of membership and similar disqualification of a general nature not based on religion, caste, race or sex.

Note : The Drafting Committee did not accept this amendment. See the note on the amendments proposed by Thakurdas Bhargava and Govind Das to clause (1) of article 10.

Tajamul Husain : That in sub-clause (c) of clause (1) of article 13, after the word 'form' the word 'non-communal' be inserted.

Note : If this amendment is given effect to, then the expression "non-communal associations or unions" would be rather vague. Further it would then be doubtful if religious associations would at all be permissible. Presumably the intention of the sponsor of this amendment is to prohibit the

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

formation of political organizations on the basis of religion. If this is so, then the proper course would be to make the following amendment :

After article 22, the following article be inserted :

22-A. No religious institution shall be used for political purposes and no political organization shall be based on religion.

Tajamul Husain : That in clause (5) of article 13, the words "or for the protection of the interests of any aboriginal tribe" be deleted.

Note : Provincial Acts have in the past imposed restrictions (for example, the Bengal Tenancy Act, 1885) in the interests of aboriginals. If the words "or for the protection of the interests of any aboriginal tribe" be omitted from clause (5) of article 13, then all existing restrictions imposed by Provincial Acts in the interests of aboriginals would become void and the Provincial Legislatures will be also prevented from exercising such powers in future. This would not surely be conducive to the welfare of the Scheduled Tribes for the protection of which special provision has been made in article 300 of the Draft Constitution. To be more specific, the expression "Scheduled Tribe" which has been defined in article 303 of the Constitution may however be substituted for the expression "aboriginal tribe" in this clause.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that the following additions should be made in article 13 :

(1) *a new sub-clause to clause (1)* whereby all citizens are to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizures ;

(2) *a new clause declaring :* The enumeration in the Constitution of the above-mentioned rights shall not be construed to deny or disparage others retained by the people.

(3) *another new clause :* Nothing in sub-clause... of the said clause (the new sub-clause proposed) shall affect the operation of any existing law, or prevent the State from making any law imposing, in the interest of public order, restrictions on the exercise of the right conferred by the said sub-clause.

Note : The insertion of the new clause in article 13 as proposed in (1) and (2) above is open to objection. All searches and seizures of property are made in accordance with the provisions of law. Such searches or seizures are authorized by law not only in the interest of public order but also for the purposes of detection of various crimes. If, for example, a person is found removing any forest produce from a Government forest, the power conferred by the Forest Act on a Forest Officer to search that person or to seize the forest produce found in his custody cannot be said merely to have been conferred in the interest of public order. It will thus be necessary to qualify the right referred to in the new sub-clause proposed in (1) above very extensively if it is to be inserted as a fundamental right in the Constitution. It would therefore hardly be of any use to include such a right as a fundamental right.

The insertion of a new clause as proposed in (2) above to the effect that the enumeration in the Constitution of the above rights mentioned in clause (1) of that article shall not be construed to deny or disparage others retained by the people is also open to objection, as in the absence of a clear definition of such other rights, questions are likely to be raised about the existence of various rights giving rise to unnecessary speculation about such rights and resulting in abnormal increase in litigation. It is therefore hardly desirable to include the new clause as a fundamental right in the Constitution.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that a new sub-clause (h) should be added to clause (1) of article 13:

(h) to represent his case himself or through a pleader or recognized agent under the law for the protection of his life, liberty, property and rights in any judicial proceedings.

Note: Such a right is already conferred by the Code of Civil Procedure and the Code of Criminal Procedure which lay down the procedure to be followed in judicial proceedings. This is hardly a matter for inclusion as a fundamental right in the Constitution itself.

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that in clause (5) of article 13 the words "affect the operation of any existing law, or" should be omitted and to the said clause the following proviso should be added:

Provided that such law receives the sanction of the President of India before or after enactment.

Note: Attention is invited in this connection to the amendment of B. Pattabhi Sitaramayya and the note thereon. Provincial Acts have in the past imposed restrictions (e.g. the Bengal Tenancy Act, 1885) in the interest of aboriginals. These laws cannot be kept alive if the amendment proposed by Gupta is accepted, in view of clause (1) of article 8 of the Draft Constitution.

Jaya Prakash Narayan: Article 13 should be redrafted as follows:

13. Subject to public order or morality the citizens are guaranteed:

- (a) freedom of speech and expression;
- (b) freedom of the press;
- (c) freedom to form associations or unions;
- (d) freedom to assemble peaceably and without arms;
- (e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace. Original article 13 is very clumsily drafted. Rights guaranteed under clause (1) are considerably taken away by other clauses.

Note: The rights to freedom of speech and expression, to form associations or unions, and to assemble peaceably and without arms, have been guaranteed

in article 13 subject to certain restrictions which have been specified in clauses (2), (3) and (4) of that article. The restrictions which may be imposed under clause (2) of that article on the exercise of the right to freedom of speech and expression are all restrictions to be imposed in the interests of public order or morality. Under clause (3) of that article restrictions may be imposed on the exercise of the right to assemble peaceably and without arms in the interests of public order. The restrictions which may be imposed under clause (4) of that article on the exercise of the right to form associations or unions are, however, wider and any restrictions may be imposed under that clause in the interests of the general public. It has been suggested by the Special Committee that the words "in the interests of public order or morality" be substituted for the words "in the interests of the general public" in that clause. The new article 13 proposed by this amendment in so far as it provides for freedom of speech and expression, freedom to form associations or unions, and freedom to assemble peaceably and without arms is virtually the same as the provisions in that behalf made in article 13 of the Draft Constitution.

The amendment further seeks to provide for freedom of the press and secrecy of postal, telegraphic and telephonic communications. It is hardly necessary to provide specifically for freedom of the press as freedom of expression provided in sub-clause (a) of clause (1) of article 13 will include freedom of the press. It is also hardly necessary to include secrecy of postal, telegraphic and telephonic communications as a fundamental right in the Constitution itself as that might lead to practical difficulties in the administration of the posts and telegraph department. The relevant laws enacted by the Legislature on the subject (the Indian Post Office Act, 1898 and the Indian Telegraph Act, 1885) permit interception of communications sent through post, telegraph or telephone only in specified circumstances, such as, on the occurrence of an emergency and in the interests of public safety.

The new article 13-A proposed by this amendment is substantially the same as the provisions contained in sub-clauses (d) and (e) of clause (1) of article 13 of the Draft Constitution, but it confines the restrictions which may be imposed on the exercise of the right to freedom of movement and to sojourn and settle in any place, to restrictions for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace; and it also seeks to confer power only on the Union Parliament to impose such restrictions.

The expression "preservation of public safety and peace" would not be sufficient and comprehensive as it may be necessary to impose restrictions in the interests of morality and in the interests of public health (for example, for the suppression of immoral traffic, prevention of contagious diseases). The expression "in the interests of the general public" used in clause (5) of article 13 is thus more appropriate.

Further, it may be also necessary to impose restrictions on persons detained in mental hospitals or in prison, on criminal tribes etc. Prison is a subject in the State List (entry 5 of List II); "mental hospitals and nomadic and migratory tribes" are in the Concurrent List (entries 19 and 24). So the power to impose such restrictions by legislation cannot properly be taken away from the States.

Again, Provincial Acts have in the past imposed restrictions in the interests of aboriginal tribes (for example, Bengal Tenancy Act, 1885). Should the Provincial Legislatures be prevented from exercising such powers in future?

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided—

- (i) that for the words "authority or foundation of" in sub-clause (2) of article 13 the words "security of, or tends to overthrow" be substituted;
- (ii) that for the words "the general public" the words "public order or morality" be substituted;
- (iii) that for the word "aboriginal" in clause (5) the word "scheduled" be substituted;
- (iv) that for the words "public order, morality or health" in clause (6) the words "of the general public" be substituted.

ARTICLE 15

B. Pattabhi Sitaramayya and others*: That in article 15 for the words "except according to procedure established by law" the words "save in accordance with law" be substituted.

Note: There is no objection to the acceptance of this amendment which seeks to substitute the words "save in accordance with law" for the words "except according to procedure established by law". "Due process of law," which is the expression used in the American Bill of Rights originally meant no more than "due procedure prescribed or established by law", and this is the form in which the clause occurs in the Japanese Constitution which is believed to have been framed under American guidance. The expression "except according to procedure established by law" has been accordingly used in article 15. The expression "save in accordance with law" which is proposed to be substituted by this amendment is, as has been pointed out in the footnote to article 15, the Irish form of the same clause.

Upendranath Barman: That in article 15 for the words "except according to procedure established by law" the words "without due process of law" be substituted.

Note: The reason for the substitution of the words "except according to procedure established by law" for the words "without due process of law" which occurred in the Draft recommended by the Advisory Committee on

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Fundamental Rights has been explained in the footnote to article 15 of the Draft Constitution.

NEW ARTICLES 18-A AND 18-B

Jaya Prakash Narayan : The following new articles should be added :

18-A. Every citizen has the right directly or without anyone's approval to bring complaints to the law courts against official persons and governmental or self-governing bodies for illegal acts which they may commit against him in their official capacity. Special provisions may be prescribed by law for Heads of Governments, Ministers, judges and soldiers under colours.

18-B. The establishment of extraordinary tribunals shall not be permitted save only such military tribunals as may be authorized by law for dealing with military offences against military law.

The jurisdiction of military tribunals shall not be extended to or exercised over, the civil population save in time of war or armed rebellion, and for acts committed in times of war or armed rebellion, and in accordance with regulations to be prescribed by law. Such jurisdiction shall not be exercised in any area in which ordinary law courts are open or capable of being held, and no person shall be removed from one area to another for the purpose of creating such jurisdiction.

Note : The new article 18-A sought to be inserted by this amendment, if adopted, would deprive all Government servants of the protection against prosecution and suits which they now enjoy under the Criminal Procedure Code, 1898, and the Civil Procedure Code, 1908, for acts done by them in their official capacity. If no such protection is afforded, then frivolous civil and criminal proceedings against Government servants will greatly increase and the day-to-day administration will be dislocated.

Further, article 25 of the Draft Constitution already provides remedies for the enforcement of fundamental rights conferred by Part III of the Constitution, and appropriate proceedings for the enforcement of such rights can be instituted against governmental or self-governing bodies. It is, therefore, hardly necessary to make any further provision for the conferment of the right to proceed against such bodies for illegal acts committed by them.

The new article 18-B proposed by this amendment seeks to ban the establishment of extraordinary tribunals except military tribunals for dealing with offences against military law. It is not, however, clear what is meant by the expression "extraordinary tribunal". The Draft Constitution provides for the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with the elections to Parliament and State Legislatures (*vide* article 289). Such tribunals are necessary for the speedy disposal of election disputes. It is not, however, clear whether the expression "extraordinary tribunal" would include such tribunals. Further, it may be necessary not only in times of war or armed rebellion but also

during civil disturbances to establish tribunals for speedy trials for the purpose of checking such disturbances. It is doubtful if such tribunals could be established if the new article 18-B proposed by this amendment is adopted. It may, however, be pointed out that it has been provided in the Draft Constitution that even if such tribunals are constituted, they will be under the appellate authority of the Supreme Court (*vide* article 112).

ARTICLE 19

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in clause (1) of article 19 after the words “freely to profess” the word “and” be inserted and for the words “and propagate religion” the words “what one believes to be his religion” be substituted.

Note : This amendment seeks to omit the reference to the propagation of religion from clause (1) of article 19. This involves a question of policy. The expression “what one believes to be his religion” used in the amendment appears to draw an unnecessary distinction between a person’s religion and what he believes to be his religion.

B. Pattabhi Sitaramayya : That in clause (2) (b) of article 19 for the words “any class or section” the words “all classes and sections” be substituted.

Note : The expression “any class or section of Hindus” used in sub-clause (b) of clause (2) of article 19 will not prevent the making of any law for throwing open Hindu religious institutions of a public character *to all classes and sections* of Hindus. There is, however, no objection to this amendment: discrimination on the ground of caste etc., is already forbidden by article 9.

Tajamul Husain : That in clause (1) of article 19 the words “and the right freely to profess, practise and propagate religion” be deleted.

or, alternatively,

That in clause (1) of article 19, for the words “practise and propagate religion” the words “and practise religion privately” be substituted.

Note : This amendment which seeks to omit the reference to the right of freely professing, practising and propagating religion, or in the alternative to omit the reference to the propagation of religion and to restrict the right to profess and practise religion to the professing and practising of religion privately, involves a question of policy.

Tajamul Husain : That the Explanation to clause (1) of article 19 be deleted and the following be inserted in its place :

No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognized.

Note : This amendment also involves a question of policy.

Tajamul Husain : That in sub-clause (b) of clause (2) of article 19, the words “of Hindus” be deleted.

Note : If this amendment is given effect to, then sub-clause (b) of clause (2) of article 19 will not prevent the making of any law throwing open

Hindu religious institutions of a public character to members of any other religious community, such as Muslims or Christians.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in sub-clause (b) of clause (2) of article 19—

(a) the word “Hindus” should be omitted; and

(b) for the words “of Hindus” the words “of persons professing that religion” should be substituted.

Note: Clause (2) of article 19 is based on the decision of the Advisory Committee on Fundamental Rights as adopted by the Constituent Assembly.

Asthika Sabha, Nungambakkam (Madras) has sent a representation for the amendment of article 19(2) on the ground that it will seriously interfere with the religious rights of the citizens.

Several similar representations have been also received from the South.

Note: These criticisms express the orthodox point of view which was fully considered by the sub-committees of the Constituent Assembly. Article 19(2) is essential in the interests of social reform.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided that for the word “preclude” in clause (2) of article 19 the word ‘prevent’ be substituted.

ARTICLE 20

B. Pattabhi Sitaramayya and others* : That in article 20, after the words “have the right” the words “subject to public order, morality and health” be inserted.

Note: There is no objection to this amendment. If it is accepted, then it should be redrafted as follows:

In article 20, before the words ‘Every religious denomination’ the words ‘Subject to public order, morality and health’ be inserted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the redraft.

ARTICLE 21

B. Pattabhi Sitaramayya and others* : That for article 21, the following be substituted:

No religion shall be recognized as a State religion nor shall any tax be levied for the promotion or the maintenance of any religion.

Note: This amendment seeks to substitute a new article for the existing article 21. The existing article 21 is based on the last paragraph of article 49 of the Swiss Constitution. The proposed amendment involves a question of policy.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari. M. Ananthasayanam Ayyangar and K. Santhanam.

ARTICLE 22

R. K. Sidhva : That in clause (1) of article 22, after the word “wholly” the words “or partly” be inserted.

Note : This amendment involves a question of policy. It may be noted that the Drafting Committee has recommended the omission of the words “by the State” from this clause.

R. K. Sidhva and S. V. Krishnamoorthy Rao : That the proviso to clause (1) of article 22 be deleted.

Note : Article 22 follows the recommendations of the *ad hoc* Committee appointed by the Constituent Assembly.* The question whether this amendment should be accepted or not should, therefore, be left to the decision of the Constituent Assembly. As a matter of drafting, the proviso seems unnecessary, because the main clause applies only to educational institutions wholly maintained out of State funds, while the proviso applies to educational institutions maintained out of private endowments or trust funds. If, however, the main clause is amended by substituting “wholly or partly” for “wholly”, the proviso may not be redundant.

T. A. Ramalingam Chettiar : That at the end of the proviso to clause (1) of article 22 the following be inserted :

nor to an institution administered by the State to which an endowment or trust is attached to provide religious instruction.

Note : This amendment is intended to extend the provisions of the proviso to clause (1) of article 22 to institutions administered by the State to which an endowment or trust is attached to provide religious instruction. If it is considered necessary or desirable to meet the point raised in this amendment, the following amendment may be made in the said proviso :

In the proviso to clause (1) of article 22, for the words “has been established under” the words “is subject to” be substituted.

T. A. Ramalingam Chettiar : That for clause (2) of article 22 the following be substituted :

No educational institution recognized by the State or receiving aid from State funds shall make it obligatory on its pupils to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or any premises attached thereto.

Note : Clause (2) of article 22 does not make it obligatory on pupils to take part in religious instruction etc., unless they or their guardians have given their consent thereto. Under the Draft, attendance at religious instruction etc. can be made obligatory on a minor pupil if his guardian consents ; under the amendment, it cannot be made obligatory at all. There is therefore a point of policy involved in this amendment.

*See C. A. Deb., Vol. V, p. 393.

Tajamul Husain : That in clause (1) of article 22 the words "by the State" and the words "wholly maintained out of State funds" be deleted.

Note : The Drafting Committee has recommended the omission of the words "by the State" from this clause as being redundant. This amendment in so far as it seeks to omit the words "by the State" from clause (1) of article 22 may therefore be accepted. The second part of this amendment which seeks to omit the words "wholly maintained out of State funds" from that clause, if accepted, would prevent the imparting of religious instruction in any educational institution. Clauses (2) and (3) of this article would then also become unnecessary. This involves a question of policy.

Drafting Committee : That in clause (1) of article 22 the words "by the State" be omitted.

Note : The words "by the State" in clause (1) of article 22 seem redundant and may be omitted. Presumably, the intention is to prohibit any religious instruction in such institutions during working hours. Clause (3) of the article provides for religious instruction out of working hours.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

NEW ARTICLE 22-A

Govind Das and Thakurdas Bhargava : That after article 22, the following new article be inserted :

22-A. Hindi shall be the national language and Devanagari the national character throughout the territories of the Indian Union.

Note : This amendment has been considered by the Drafting Committee, and the committee was of opinion that as the new article proposed by the amendment involved a question of a policy, it should be left for decision to the Constituent Assembly.

Jaya Prakash Narayan : The following new article 22-A be added :

22-A. The use of religious institutions for political purposes and the existence of political organization on religious basis is forbidden. Complete defferentiation of politics from religion is necessary.

Note : This amendment involves a question of policy. If this amendment is accepted, it should be redrafted as follows :

After article 22 the following article be inserted :

22-A. No religious institution shall be used for political purposes and no political organization shall be based on religion.

ARTICLE 23

Govind Das : That the following words be inserted at the beginning of clause (1) of article 23 :

Notwithstanding that Hindi in Devanagari character shall be the national language of the Indian Union.

Note : If either of the amendments proposed for insertion of a new article 22-A is accepted, this amendment will be necessary as a consequential amendment and to give effect to this amendment it will be sufficient to insert "Notwithstanding anything contained in article 22-A of this Constitution" before the words "Any section of the citizens" in clause (1) of article 23.

B. Pattabhi Sitaramayya and others* : That in article 23, clause (2) and sub-clauses (a) and (b) of clause (3), after the word "religion" the words "caste, creed," be inserted.

Note : The term "community" would seem wide enough to include "caste"; and "creed" would seem to be covered by "religion". The amendment would therefore seem to be unnecessary.

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in clause (2) of article 23 after the words "institution maintained" the words "or subsidized" be inserted.

Shrimati Purnima Banerji : That in clause (2) of article 23, for the words "maintained by the State" the words "maintained or aided by the State" be substituted.

Note : If this amendment is accepted, then it should be redrafted as follows :

In clause (2) of article 23, the following words be added at the end :
"or receiving aid out of State funds".

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the above redraft.

T. A. Ramalingam Chettiar : That at the end of clause (2) of article 23 the following be inserted :

so as to deprive the minority of its due share in the admission.

Note : This clause as it stands prohibits discrimination of every sort or kind, but if this amendment is accepted, its scope will be restricted and it will be necessary to find out in each case of discrimination whether the minority has been deprived of its due share of admissions and this may lead to complications.

R. R. Diwakar and S. V. Krishnamoorthy Rao : That to sub-clause (b) of clause (3) of article 23 the following proviso be added :

Provided that such institutions are open to all persons irrespective of religion, community or language.

Note : If the earlier amendment suggested by them is accepted, then this amendment will hardly be necessary.

The Madras Legislative Council has suggested that in clause (2) of article 23 the words "subject to the provisions of article 37" be added.

Note : There is really no conflict between article 23 and article 37. Clause (2) of article 23 deals with justiciable fundamental rights whereas article 37

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Anantasayanam Ayyangar and K. Santhanam.

deals with non-justiciable principles of state policy, and both the provisions can be given effect to without any conflict. This amendment is therefore hardly necessary.

Jaya Prakash Narayan : The following should be substituted for sub-clause (a) of clause (3) of article 23 :

(a) Linguistic minorities shall have the right to establish, manage and control educational institutions and cultural associations for the promotion of the study and knowledge of their language and literature, as well as for imparting general education to their children at primary and pre-primary stages through the medium of their own languages.

Secularization of general education is necessary for the growth of national outlook and unity.

Note : This amendment involves a question of policy. If this amendment is accepted, then it should be redrafted as follows :

For sub-clause (a) of clause (3) of article 23 the following sub-clause be substituted :

(a) All minorities based on language shall have the right to establish and administer educational institutions for the promotion of the study of their language as well as for imparting general education to their children up to the primary stage through the medium of their own language.

Jaya Prakash Narayan : The following sub-clause should be added to clause (3) of article 23 :

(c) Denominational and communal educational institutions are forbidden except for the purposes of the study of religion and oriental learning.

Secularization of general education is necessary for the growth of national outlook and unity.

Note : This amendment also involves a question of policy. If this amendment is accepted, then educational institutions established for the promotion of education among the Anglo-Indian community under special endowments or trusts, such as La Martiniere College, St. Thomas School, St. Xavier's College, etc., will be hit by this provision, and it will conflict with article 298 where special safeguards have been provided with regard to such institutions.

Drafting Committee : That in clause (1) of article 23, for the words "script and culture" the words "script or culture" be substituted.

Note : Some critics have pointed out that there are sections of citizens residing in the territory of India to whom clause (1) of article 23 would not afford any protection : e.g., it is said that the Muslims in West Bengal do not differ from the Hindus there in respect of their language and script, but have a distinct culture of their own, while the Andhras in Orissa have a language and script of their own but not a culture different from that of the majority community. Clause (1) of article 23 would not afford them protection to maintain their culture or their language and script.

The amendment proposed is intended to meet this criticism.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

The Drafting Committee also decided to sponsor an amendment to clause (2) inserting after the words "maintained by the State" the words "or receiving aid out of State funds".

ARTICLE 24

B. Pattabhi Sitaramayya and others* : That in article 24 (2) after the word "interest" a comma be inserted and the comma after the word "in" following immediately be deleted.

Note : The Draft, as it stands, follows the language and punctuation of section 299 (2) of the Government of India Act, 1935. The comma after the words "interest in" in clause (2) of article 24 should be retained as the expression "interest" in that clause refers to interest in any commercial or industrial undertaking or interest in any company owning any commercial or industrial undertaking. However, to make the intention clearer, the following amendment may be made in the said clause :

In clause (2) of article 24, after the words "any interest in, or" the words "any interest" be inserted.

Guptanath Singh : That in clause (2) of article 24, for the words "No property" the words "All property", and for the words "unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined" the words "with or without compensation as the Government thinks proper" be substituted.

Note : This amendment, as it is worded, seeks to provide that *all property, movable or immovable, shall be* taken possession of or acquired for public purposes with or without compensation as the Government thinks proper. Even in the U.S.S.R., "the right of citizens to personal ownership of their incomes from work and of their savings, of their dwelling-houses, their household furniture and utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens is protected by law" (Art. 10 of the Constitution of the U.S.S.R.).

L. N. Sahu : That the following be added after clause (2) of article 24 :

The right of property cannot be exercised contrary to the good of the society.

Note : The precise implications of this amendment are not clear. If the implication is that the State may by law delimit the exercise of rights of private property in the interests of the general public, an appropriate amendment should be made in clause (3)(b); e.g., by adding the words "or for the general welfare of the community" at the end.

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B. Pattabhi Sitaramayya : That in article 24(3) (b) ascertain the object of exemption for reasons of public health, etc.

Note : The exemption for reasons of public health or on the ground of prevention of danger to life in sub-clause (b) of clause (3) of article 24 has been provided for with the object of enabling provisions to be made by law, in particular, for the exercise by municipal or other local authorities of the power of demolishing insanitary or insecure buildings, for the promotion of the health of the inhabitants of the locality or the prevention of danger to life.

The exemption on the ground of prevention of danger to property in sub-clause (b) of clause (3) of article 24 has been provided for with the object of enabling provisions to be made by law, in particular, for the exercise by the State of the power of destroying any infected fruit-trees or crops in order to prevent widespread ravage by any insect-pest or plant-disease.

The Ministry of Works, Mines and Power suggested that in clause (2) of article 24 the word "equitable" should be inserted before the word "compensation" in the first place where it occurs. Other possible alternatives are "fair" or "just".

The Ministry of Industry and Supply suggested that clause (2) of article 24 should specifically provide for the payment of "reasonable" compensation when property is acquired for public purposes, and has pointed out that the Government of India Resolution dated April 16, 1948, in which Government's industrial policy was announced, declares that in the event of acquisition "the fundamental rights guaranteed by the Constitution will be observed and compensation will be awarded on a fair and equitable basis". The Ministry has further stated that the Draft Constitution recognizes the right to compensation but a guarantee of "reasonable" compensation should, it feels, be also explicitly declared.

Note : It is hardly necessary to insert the word "equitable" or the word "just" or the word "reasonable" before the word "compensation" in the first place where it occurs in clause (2) of article 24. The noun "compensation", standing by itself carries the idea of an equivalent. Thus we speak of damages by way of compensation, or compensatory damages, as distinguished from punitive or exemplary damages, the former being the equivalent for the injury done, and the latter imposed by way of punishment. Accordingly, even if the adjective "equitable", "just" or "reasonable" is not used, the natural import of the language of the existing clause (2) of article 24 would be that the compensation should be equivalent of the property taken possession of or acquired. [*Vide Monongahela Navigation Co., v. United States*—U. S. 148, Lawyers' Edition 37, pp. 325-326.] It may further be pointed out that when the Constituent Assembly at its meeting held on May 2, 1947, considered this provision, which was clause 19 of the fundamental rights recommended by the Advisory Committee on Fundamental Rights, an amendment was moved for the insertion of the word "just" after

the words "the payment of" and that after a good deal of discussion the mover of the amendment ultimately withdrew his amendment by leave of the Assembly.

Any of these amendments is therefore hardly necessary.

Jaya Prakash Narayan : The following should be substituted for article 24, regarding property :

24. (a) The property of the entire people is the mainstay of the State in the development of the national economy.

(b) The administration and disposal of the property of the entire people are determined by law.

(c) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses.

(d) Private property and economic enterprises as well as their inheritance may be taxed, regulated, limited, acquired and requisitioned, expropriated or socialized but only in accordance with the law. It will be determined by law in which cases and to what extent the owner shall be compensated.

(e) Expropriation orders against the Federated States, Provinces, Sub-Federations, municipalities and associations serving the public welfare may take place only upon the payment of compensation.

Note : This amendment involves a question of policy. In so far as it seeks to delimit the exercise of rights of private property in the interests of the general public, it may be given effect to by the following amendment in clause (3) of article 24. In sub-clause (b) of clause (3) of article 24 the following words be added at the end :

or for the general welfare of the community.

This amendment also seeks to provide that private property and economic enterprises, as well as their inheritance, may be regulated, limited, acquired, requisitioned, expropriated or socialized with or without compensation. Even in the U.S.S.R. "the right of citizens to personal ownership of their incomes from work and of their savings, of their dwelling houses and subsidiary household economy, their household furniture and utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens, is protected by law." (Article 10 of the Constitution of the U.S.S.R.)

Decision of the Drafting Committee, October, 1948 : The Drafting Committee redrafted clause (2) of article 24 in the following manner :

(2) No property, movable or immovable, *including any interest, in any commercial or industrial undertaking, or in any company owning such undertaking*, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.

NEW ARTICLES 24-A AND 24-B

Jaya Prakash Narayan : The following new articles be added after article 24 :

24-A. Private monopolies such as trusts, cartels, syndicates and the like are forbidden.

24-B. (a) To ensure protection against economic exploitation and the development of organizational initiative amongst them, peasants and workers are guaranteed the right to unite into public organizations, trade unions, *kisan sabhas*, co-operative societies as well as social, cultural and technical associations.

(b) The State shall encourage them in their organizational activities.

(c) All agreements between employers and employees which attempt to limit this freedom or seek to hinder its exercise shall be illegal.

Note : The new article 24-A proposed by this amendment seeks to forbid private monopolies, such as trusts, cartels, syndicates, etc. It is for consideration if there should be a provision about such absolute prohibition in the Constitution itself or it should be left to the appropriate Legislature to regulate and control such private monopolies. In the United States of America such power is exercised by the Congress by virtue of the provision contained in clause (3) of section 8 of article I of the Constitution of the United States of America (1787). The Congress has power to regulate commerce with foreign nations and among the several States and with the Indian tribes. Statutes have been passed by the Congress to control the activities of combines and monopolies: for example, the Sherman Anti-Trust Act, 1890; the Clayton Act; the Federal Trade Commission Act, 1914; the Public Utility Holding Company Act, 1935. In times of economic depression it may be necessary for the Government to create syndicates or trusts for the proper distribution of essential commodities. But this will not be possible if the new article 24-A is inserted in the chapter dealing with fundamental rights. The proper course therefore seems to be to insert after entry 28 of the Concurrent List (List III of the Seventh Schedule) the entry: "28-A. Monopolies and combines". This would enable both Parliament and the Legislature of the State to control the operations of combines and monopolies by suitable legislation.

Clause (a) of the new article 24-B proposed by this amendment is hardly necessary as the right sought to be conferred by this clause has been already provided for in sub-clause (c) (1) of article 13.

It would hardly be appropriate to include clause (b) of the new article 24-B in the provisions relating to fundamental rights.

Clause (c) of the new article 24-B is not necessary, for no agreement between an employer and an employee which seeks to limit the rights conferred by article 13(1)(c) of the Constitution will be enforceable by law.

This amendment cannot therefore be accepted.

ARTICLE 25

B. Pattabhi Sitaramayya and others* : That at the beginning of clause (3) of article 25, the words "without prejudice to the powers of the Supreme Court under clause (2) of this article" be inserted, and at the end for the words "clause 2 of this article" the words "under the said clause" be substituted.

Note : There does not appear to be any objection to these amendments. The amendments should however be redrafted as follows before they are accepted :

(1) In clause (3) of article 25, before the words "Parliament may by law" the words "Without prejudice to the powers conferred on the Supreme Court by clause (2) of this article" be inserted.

(2) In clause (3) of article 25, for the words "under clause (2) of this article" the words "under that clause" be substituted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the redraft suggested above.

R. K. Sidhva : That in clause (3) of article 25, for the words "other court" the words "High Court" be substituted.

Note : This amendment is not necessary. In article 202, High Courts have already been invested with the powers exercisable by the Supreme Court under clause (2) of article 25. Clause (3) of article 25 seeks to give power to Parliament to empower any other court to exercise all or any of these powers for the convenience of parties, so that a person may, instead of having to go to the High Court or the Supreme Court direct, have recourse to a nearer court for remedy.

Tajamul Husain : That clause (4) of article 25 be deleted.

Note : Clause (4) of article 25 should be read along with article 280 of the Draft Constitution. Under article 280 power has been given to the President to suspend the rights guaranteed by article 25 during the period a proclamation of emergency is in operation and for a further period not extending beyond a period of six months after such proclamation has ceased to be in operation. The Drafting Committee has recommended that the period of suspension in article 280 should be restricted to the period during which the proclamation of emergency is in operation. The proclamation of emergency can be issued only when the President is satisfied that a grave emergency has arisen whereby the security of India is threatened, whether by war or domestic violence. During such a period of emergency, when the entire existence of the State is at stake, it may be necessary to curtail rights which are enjoyed in normal times. Cf. article 40(4)3° of the Irish Constitution. See also article 1, section 9(2) of the Constitution of the United States of

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America (1787) which runs: "The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it". The provision for the suspension of the right with regard to the enforcement of fundamental rights during the period of emergency also follows the decision already taken by the Constituent Assembly.

The Editor of the *Indian Law Review* and some other members of the Calcutta Bar have suggested that clause (2) of article 25 should be redrafted as follows so as not to restrict the remedies to the writs specifically mentioned in that clause:

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, appropriate for the enforcement of any of the rights conferred by this Part.

Note: Existing clause (2) of article 25 does not restrict the powers of the Supreme Court to the issue only of writs in the nature of the writs specifically mentioned in that clause but gives power to the Supreme Court to issue directions and orders in the nature of such writs. This amendment is therefore hardly necessary.

ARTICLE 26

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided that for the words "guaranteed in" in article 26 the words "conferred by" be substituted.

ARTICLE 27

B. Pattabhi Sitaramayya and others*: (1) That in clause (a) of article 27, after the words "are required to" the words "or may" be inserted. (2) That in article 27 after the words "for such matters" the following be added:
as are required to be provided for by legislation by Parliament.

Note: These amendments may cause grave inconvenience in the Provinces. For example, suppose there is an outbreak of plague in West Bengal and consequently Bihar desires to impose restrictions, requiring a special law, on persons coming from Bengal. The prevention of the spread of infectious or contagious diseases being a subject in the Concurrent List (entry 29 of List III), such restrictions may be imposed, under article 13(5) read with article 7, either by the Union Parliament or by the Bihar Legislature. The effect of the present amendment would be that the restrictions cannot be imposed by the Bihar Legislature at all and Bihar will have to move the

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Centre for the necessary legislation. The proposed amendment is not therefore an improvement.

The language of this article (article 27) is, however, defective in certain other respects and amendments to remove the defects have been separately suggested.

B. Pattabhi Sitaramayya and others* : That in the proviso to article 27, the words "or other competent authority" at the end be deleted.

Note : This amendment may be accepted.

Drafting Committee : (1) That for clause (a) of article 27, the following clause be substituted :

(a) with respect to any of the matters which, under article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and

(2) That for the words "to provide for such matters and for prescribing punishment for such acts" the words "for prescribing punishment for the acts referred to in clause (b) of this article" be substituted.

(3) That for the proviso to article 27, the following be substituted :

Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

Explanation : In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.

Note : These are merely drafting amendments, necessitated mainly by the fact that there are no matters in this Part which in terms are *required* to be provided for by legislation by Parliament.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendments.

NEW ARTICLE 27-A

Raghuvira : That after article 27, the following new article be inserted :

27-A. It shall be the duty of every male person between the ages of 18 and 45 to receive military training and to render military service whenever required by the State.

Note : This amendment involves a question of policy. The new article 27-A proposed by this amendment seeks to cast a duty on every male person between the ages of 18 and 45 to receive military training and to render military service whenever required by the State. It thus imposes a duty on

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citizens and as such it does not provide for any rights to them. It would hardly be appropriate to include such a provision in the Part relating to fundamental rights.

5. Directive Principles of State Policy

ARTICLE 29

B. Pattabhi Sitaramayya and others* : That in article 29 the words "as far as possible" be inserted after the words "these principles".

Note : There is no objection to this amendment, but as the directions contained in Part IV of the Draft are non-justiciable, this amendment is hardly necessary.

ARTICLE 31

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in paragraph (v) of article 31, for the words "that the strength and health" the words "that the health and strength" be substituted.

Note : Clause (v) of article 31 follows the wording used in article 45(4)² of the Irish Constitution. The expression "strength and health of workers" occurs in that article. Heavy work affects strength first and health afterwards; hence the order of the words. The amendment is unnecessary.

L. N. Sahu : That in paragraph (v) of article 31, for the words "their age" the words "their age, sex" be substituted.

Note : The amendment may be accepted. The expression used in article 45(4)² of the Irish Constitution is "their sex, age or strength".

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the above amendment.

Thakurdas Bhargava and Govind Das : That at the end of article 31, the following new paragraph be added :

(vii) that all citizens enjoy equal electoral rights without distinction of religion, race, caste or sex.

Note : The remarks on the amendment proposed by Thakurdas Bhargava and Govind Das to article 10(1) will also apply to this amendment. The Drafting Committee considered this amendment and was of the view that it should not be accepted.

ARTICLE 34

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in article 34, for

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the words "industrial or otherwise" the words "by hand or brain or both" be substituted.

Note: The expression "all workers, industrial or otherwise" would seem to be wide enough to include workers by hand or brain or both and this amendment is hardly necessary.

ARTICLE 36

S. Nagappa : That in article 36 the words "endeavour to" be deleted and the following be added at the end :

and in the case of the Scheduled Castes and Scheduled Tribes free and compulsory education until they complete the age of 18.

Note: This amendment involves a question of policy.

NEW ARTICLE 36-A

L. N. Sahu : That after article 36, a fresh article be inserted providing for compulsory physical education for every citizen.

Note: This amendment also involves a question of policy.

ARTICLE 37

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in article 37, after the words "special care the" the word "cultural" be inserted, for the words "of the weaker" the words "of the backward", and for the words "protect them from social" the words "protect them from social and economic" be substituted.

Note: The expression "weaker sections" occurring in the Draft has been taken from article 45(4)1° of the Irish Constitution. The emphasis is not so much on their backwardness as on their lack of strength to resist exploitation.

If the State promotes their economic interests with special care and protects them from all forms of exploitation, they would necessarily be protected from "economic injustice".

While, therefore, there is no great objection to the amendments suggested, they would seem to be unnecessary.

NEW ARTICLE 38-A

Thakurdas Bhargava and Govind Das : That the following new article be inserted after article 38:

38-A. The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and in particular take steps to preserve, protect and improve the useful breeds of cattle and ban the

slaughter of cows and other useful cattle, specially milch cattle and of child-bearing age, young stock and draught cattle.

Note: The Drafting Committee considered this amendment and was of opinion that it involves questions of policy.

ARTICLE 39

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in article 39 after the words "from spoliation" the word "disfigurement" be inserted.

Note: This amendment may be accepted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

NEW ARTICLE 39-A

Drafting Committee : That after article 39, the following new article be inserted :

39-A. The State shall take steps to secure that, within a period of three years from the commencement of this Constitution, there is separation of the judiciary from the executive in the public services of the State.

Note: This new provision is intended to secure the separation of the judiciary from the executive in the public services of the State. The Drafting Committee, in the amendment proposed by it, had used the expression "complete separation of the judiciary etc."; the Special Committee however considered that the word "complete" was unnecessary, and this word has accordingly been omitted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 40

B. Pattabhi Sitaramayya and others* : That in article 40 before the word "promote" the words "endeavour to" be inserted and the word "open" be deleted.

Note : This article has been taken from the Declaration of Havana made in 1939 by the representatives of the Governments, employers, and workers of the American Continent.

There is no great objection to the insertion of the words "endeavour to" as suggested in the amendment; but there is no reason why the word "open" should be deleted. The article is meant, among other things, to discourage secret treaties which often lead to war.

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Decision of the Drafting Committee, October, 1948 : The Committee decided to redraft article 40 as follows :

40. The State shall—

- (a) promote international peace and security ;
- (b) seek to maintain just and honourable relations between nations ; and
- (c) endeavour to sustain respect for international law and treaty obligations in the dealings of organized people with one another.

NEW ARTICLE 40-A

Raghuvira : That the following new article be inserted after article 40 :
40-A. Notwithstanding anything contained in article 40, it shall be the obligation of the State to impart military training to all men of military age and to impart physical training to all other men and women with a view to keep them fit for undertaking the defence of their country should such necessity arise.

Note : This amendment involves a question of policy.

6. *The Executive*

THE UNION EXECUTIVE

ARTICLE 42

B. Pattabhi Sitaramayya and others* : That in article 42(3), consider the need for the sub-clause.

Note : Clause (3) of article 42 should be retained, for otherwise clause (1) of that article may be held to have the effect of transferring to the President all functions conferred by any existing law on any authority other than the President where such functions relate to the exercise of the executive power of the Union. There are many such existing laws, dealing with subjects falling in the Union List, which, under section 124(2) of the Government of India Act, 1935, have conferred functions on Provincial Governments and Provincial officers. The aforesaid clause (1) may also be held to be in conflict with other provisions in the Constitution under which Parliament has been given power to confer by law functions on authorities other than the President *vide*, for example, article 235(2).

S. K. Roy Choudhury (Ex-Mayor of Calcutta) has suggested that in clause (1) of article 42, for the word “may” the word “shall” be substituted.

Note : The expression “may be exercised” used in clause (1) of article 42 and in clause (1) of article 130 is intended to mean “is exercisable”. If

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the said expression is replaced by the expression "shall be exercised", then it would conflict with the provisions of clause (3) of article 42 or, as the case may be, clause (2) of article 130, which contemplates the exercise of executive power by other authorities as well.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that the following new sub-clause (c) should be added to clause (3) of article 42 :

(c) be deemed to empower the exercise by the President of any functions referred to in sub-clause (b) hereinabove so long as the legislation conferring such functions thereunder is in operation.

Note : This amendment is hardly necessary in view of the provisions contained in clause (1) of article 42 that the executive power of the Union may be exercised by the President in accordance with the Constitution and the law. If by law functions are conferred on authorities other than the President, then it will not be competent for the President to exercise such functions so long as the law conferring such functions is in operation.

ARTICLE 43

Upendranath Barman : That clause (b) of article 43 be deleted.

Note : Article 43 is based on the decision already taken by the Constituent Assembly as to the election of the President. As this amendment seeks to make a departure from such a decision, it ought to be left for decision to the Constituent Assembly.

S. Nagappa : That the following be inserted at the end of article 43 :

- (c) the members of the Senates and the Syndicates of all the Universities.
- (d) Presidents of the District Boards.
- (e) Mayors of Corporations, and
- (f) Chairmen of Municipalities.

Note : Article 43 is based on the decision already taken by the Constituent Assembly as to the election of the President and since a departure from such decision is sought to be made by the proposed amendment, the matter should be left for decision to the Constituent Assembly.

Drafting Committee : That in clause (a) of article 43, for the word "members" the words "elected members" be substituted.

Note : It has been provided in article 67(1) that fifteen members of the Council of States shall be nominated by the President. Presumably, it is not intended that these nominated members should take part in Presidential elections; only the elected members of the State Legislatures are mentioned in clause (b) of article 43. If this presumption is correct, the word "members" in clause (a) also should be changed to "elected members".

Drafting Committee : That to article 43 the following explanation be added :

Explanation : In this and the next succeeding articles, the expression 'the

Legislature of a State' means, where the Legislature is bicameral, the Lower House of the Legislature.

Note : According to a decision already taken by the Constituent Assembly, in clause (b) of article 43, the expression "the Legislatures of the States" means, where the Legislature is bicameral, the Lower House of the Legislature of the State. Therefore, the Explanation to article 44 in so far as it defines the expression "the Legislature of a State" should be also made applicable to this clause.

[The Drafting Committee has accepted these amendments.]

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the two amendments suggested by it.

ARTICLE 44

B. Pattabhi Sitaramayya and others* : That in clause (2) (c) of article 44, after the word "dividing" the words "one half of" be inserted.

Note : It is not clear why it is proposed to divide one-half of the total number of votes assigned to the members of the Legislatures of the States by the total number of members of the Legislatures of the States to obtain the number of votes which each elected member of either House of Parliament shall be entitled to cast. The whole object of article 44 is to ensure uniformity in the scale of representation. If the scale were uniform in all the States, there would have been no need for this article and we could have simply said that each member, whether of the Central Legislature or of the Legislatures of the States, shall have one vote. The result of the proposed amendment is that even in such a case, each member of the Central Legislature shall have only half a vote, while each member of the Legislatures of the States shall have a full vote.

The object of sub-clause (c) of clause (2) of article 44, as it stands in the Draft, is to obtain the average number of votes which a member of the Legislature of a State is entitled to cast and to give to each elected member of either House of Parliament a number of votes equal to the aforesaid average, whereas, the effect of the amendment proposed would be to give to each member of Parliament only one-half of that number of votes. The amendment does not seem fair to the members of the Central Legislature. It should be noted that the Drafting Committee has recommended that in clause (a) of article 43 "elected members" be substituted for "members".

Upendranath Barman : That article 44 be deleted.

Note : Article 44 is based on the decision already taken by the Constituent Assembly that in order to secure uniformity in the scale of representation of the units at the election of the President, the votes of the members of

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the unit Legislatures shall be weighted in proportion to the population of the units concerned. As a departure from such decision is sought to be made by the proposed amendment, the matter should be left for decision to the Constituent Assembly.*

Drafting Committee : That for the Explanation to article 44 the following Explanation be substituted :

Explanation : In this article, the expression 'population' means the population as ascertained at the last preceding census.

Note : The deletion of the following words is consequential to the amendment proposed by the Drafting Committee to article 43 :

the expression 'the Legislature of a State' means, where the Legislature is bicameral, the Lower House of the Legislature, and

FOOTNOTE TO ARTICLE 44

Drafting Committee : That in the footnote to clause (2) of article 44, for the illustration under sub-clause (c) of clause (2), the following be substituted:

If the total number of votes assigned to the elected members of the Legislatures of the States in accordance with the above calculation be, say, 2,62,225 and the total number of such members be 5,250, then to obtain the number of votes which each elected member of either House of Parliament will be entitled to cast at the election of the President, we should have to divide 2,62,225 by 5,250. Thus the number of votes which each such member will be entitled to cast in the case would be

$\frac{2,62,225}{5,250} = 49\frac{199}{210}$ i.e., 50 (the fraction $\frac{199}{210}$ which exceeds one-half being counted as one).

Note : In the illustration under sub-clause (c) of clause (2) of article 44 as given in the footnote to that clause some mistakes have crept in. The reference to the total number of elected members of both Houses of Parliament in the illustration should be to the total number of the elected members of the Legislatures of the States. To obtain the number of votes which each elected member of either House of Parliament will be entitled to cast, we should have to divide the total number of votes assigned to the elected members of the Legislatures of the States under sub-clauses (a) and (b) of clause (2) of article 44 by the total number of such members as provided in sub-clause (c) of clause (2) of that article. The proposed amendment is intended to rectify the mistakes.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the following amendments to article 44:

(i) For sub-clause (c) of clause (2) substitute :

(c) each elected member of either House of Parliament shall have such

*The Drafting Committee finally decided to give a higher weightage to members of Parliament (*See infra*).

number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislatures of the States under sub-clauses (a) and (b) of this clause by the total number of *the elected members of both Houses of Parliament*, fractions exceeding one-half being counted as one and other fractions being disregarded.

(ii) For explanation under clause (3) substitute :

In this article, the expression "population" means the population as ascertained at the last preceding census.

ARTICLE 45

Drafting Committee : That in clause (a) of the proviso to article 45, for the word "resignation" the word "writing" be substituted.

Note : In clause (a) of the proviso to article 45, for the word "resignation" the word "writing" should be substituted, following the wording used in clause (a) of the proviso to article 56, clause (b) of article 74, clause (b) of article 77, and sub-clause (b) of clause (2) of article 82.

[The Drafting Committee has accepted this amendment.]

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 47

B. Pattabhi Sitaramayya and others* : That in paragraph (a) of the Explanation to clause (2) of article 47, the words "Governor or member of Parliament or of a State Legislature" be added.

Note : A member of Parliament or of the Legislature of a State cannot be said to hold any office or position of emolument under the Government (of India or of any State) merely because he may receive a salary or allowances under the provisions of the Constitution, any more than a paid member of the House of Commons in England can, on that account, be said to hold an office of profit under the Crown. It is therefore not necessary to include in clause (a) of the Explanation to clause (2) of article 47 any reference to such member. The case of a Governor appointed by the President may be different, and the amendment in so far as it seeks to include the Governor in the said clause may therefore be accepted. The following redraft of the amendment is accordingly suggested :

For paragraph (a) of the Explanation to clause (2) of article 47, the following be substituted :

(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a Minister either for India, or for any such State ; or

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the redraft.

Note: A critic has invited attention to the difference in wording used in article 47(2) where the words "holds any office or position of emolument" occur and that used in article 83 where the words "holds any office of profit" have been used, and has suggested that there should be uniformity in the wording used in those two articles.

The expression "office or position of emolument" has been borrowed from the Irish Constitution [see article 12(6) thereof], whereas the expression "office of profit" occurs in the Government of India Act, 1935 [see section 69(1)(a) thereof]. It would be better to use an expression the meaning and implications of which are better known than a new expression. The following amendment is accordingly suggested :

In clause (2) of article 47, for the words "any office or position of emolument" in the two places where they occur, the words "any office of profit" be substituted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

NOTE ON ARTICLE 48

A critic has suggested that in clause (1) of article 48, for the word "Parliament", in the first and second places where it occurs, the words "a House of Parliament" should be substituted to avoid any confusion with the provision in article 66 that Parliament shall consist of the President and two Houses.

To remove any possible confusion the following amendments may be made in clause (1) of article 48 :

In clause (1) of article 48—

- (a) for the words "either of Parliament or" the words "of either House of Parliament or of a House" be substituted ;
- (b) for the words "member of Parliament or" the words "member of either House of Parliament or of a House" be substituted ;
- (c) for the words "in Parliament or such Legislature, as the case may be," the words "in that House" be substituted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendments. Clauses (1) and (2) of article 48 read :

- 48. (1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House, on the date on which he enters upon his office as President.
- (2) The President shall not hold any other office of profit.

ARTICLE 49

R. K. Sidhva : That for the form of oath in article 49 the following be substituted :

I do solemnly and sincerely swear before the people of the whole country that I will observe the Constitution, faithfully perform my duties, promote the welfare of the people, safeguard the security of the Union of India and be loyal to the trust of the people. Should I break my oath, I will submit myself to the severest punishment from the State.

Note : The promises contained in the oath suggested by this amendment (except in the last sentence thereof) are mostly the same as those contained in the form of oath prescribed in article 49. The last sentence of the oath proposed by the amendment is inappropriate, as the Constitution already contains a provision for impeachment of the President for violation of the Constitution.

[The Federal Court and the Chief Justices of the Provincial High Courts have expressed the view that in article 50 (3) it is perhaps desirable to provide for the appointment of the investigating authority, as has been done in article 137(3) relating to the impeachment of the Governor.

The expression "cause the charge to be investigated" is sufficiently wide for permitting the appointment of an investigating authority. This will be clear from the first proviso to clause (1) of article 302.]

Drafting Committee : That in article 49, after the words "Chief Justice of India" the words "or, in his absence, any other judge of the Supreme Court" be inserted.

Note : This amendment has been proposed in order to give effect to a suggestion made by the Federal Court and the Chief Justices of the Provincial High Courts that provision may be made against the contingency of the Chief Justice of India not being available for administering the oath.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 50

Upendranath Barman : That in sub-clause (a) of clause (2) of article 50, for the words "thirty members" the words "one-third of the total membership" be substituted.

Note : The substitution of the words "one-third of the total membership" for the words "thirty members" in sub-clause (a) of clause (2) of article 50 would make the initiation of the proceedings for impeachment of the President very rigid. Sub-clause (a) of clause (2) of article 50 merely relates to the proposal to prefer a charge. The charge shall not be preferred unless the proposal is supported by not less than two-thirds of the total

membership of the House as provided in sub-clause (b) of that clause. It would therefore seem to be sufficient if thirty members sign the notice of the resolution to be considered by the House. Under the Irish Constitution, thirty members are required to sign the notice of the motion to prefer a charge against the President [*Vide* article 12(10)3°].

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided that for the words 'supported by' occurring in sub-clause (b) of clause (2) and in clause (4), the words 'passed by a majority' be substituted.

ARTICLE 53

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to redraft article 53 as follows :

53. The Vice-President shall be *ex-officio* Chairman of the Council of States and shall not hold any other office of profit :

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 54 of this Constitution, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution.

ARTICLE 54

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to redraft clause (3) of article 54 as follows :

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as or discharging the functions of the President, have all the powers and immunities of the President and be entitled to such privileges, emoluments and allowances as may be determined by Parliament by law and, until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule.

ARTICLE 55

B. Pattabhi Sitaramayya and others* : That in para (a) of the Explanation to clause (4) of article 55, the words "Governor and members of Parliament or State Legislature" be added.

Note : The remarks on the amendment of Pattabhi Sitaramayya and others under article 47 would also apply to this amendment. This

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

amendment may therefore be redrafted as follows :

For paragraph (a) of the Explanation to clause (4) of article 55 the following be substituted :

(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a Minister either for India or for any such State ; or,

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the following redrafts of clauses (2) and (4) :

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House, on the date on which he enters upon his office as Vice-President.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation : For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that—

(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a Minister either for India or for any such State ; or

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of such Legislature, and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

ARTICLE 56

Upendranath Barman : That the following words be added at the end of paragraph (b) of the proviso to article 56 : “and the resolution is signed by at least one-sixth of the total membership of the House”.

Note : This amendment involves a question of policy.

ARTICLE 59

Tajamul Husain : That clause (3) of article 59 be deleted.

Note : This amendment seeks to omit clause (3) of article 59. The reason for the insertion of this clause has been explained in the footnote to sub-clause (c) of clause (1) of article 59.

ARTICLE 60

T. A. Ramalingam Chettiar : That in the proviso to clause (1) of article 60, the words "or in any law made by Parliament" be deleted.

Note : The reasons for the insertion of the words "or in any law made by Parliament" in the proviso to clause (1) of article 60 have been explained in paragraph 7 of the letter dated the 21st February, 1948 of the Chairman of the Drafting Committee to the Hon'ble the President.*

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in the proviso to clause (1) of article 60 the words "or in any law made by Parliament" should be deleted as they consider that such an important function should not be left to be extended by ordinary legislation.

Note : The reason for the insertion of the words "or in any law made by Parliament" in the proviso to clause (1) of article 60 has been explained in paragraph 7 of the letter dated the 21st February, 1948, of the Chairman of the Drafting Committee to the President of the Constituent Assembly*.

ARTICLE 62

S. Nagappa : That after clause (1) of article 62, the following new clause be inserted:

(1-a) The Ministers so appointed shall not exceed one-fifth of the total number of Cabinet Ministers from the Upper House.

Note : This amendment is hardly intelligible. Presumably what is intended is that the Ministers chosen from the Upper House shall not exceed one-fifth of the total number of members of the Council of Ministers. It is hardly desirable to include such a provision in the Constitution.

The Ministry of Home Affairs has suggested that specific provision should be included in the Constitution for Ministers of State and their salaries.

Note : If the Ministers of State are to be regarded as members of the Council of Ministers, no separate provision for them appears to be necessary. If, however, they are not to be treated as members of the Council of Ministers, then it will always be competent for the President to appoint such Ministers from amongst the members of the Union Parliament in the same way as persons will be appointed to the posts in connection with the affairs of the Union. The President may also prescribe the duties and fix the salaries of such Ministers and no provision in the Constitution itself appears to be necessary for the purpose. Nor does any special provision appear to be necessary for Deputy Ministers who are not also members of the Council of Ministers.

*See Vol. III, Doc. 6.

Since the Ministers of State and Deputy Ministers who are members of Parliament will hold offices of profit under the Government of India, it will however be necessary for Parliament to make a law declaring that the holders of such offices will not be disqualified for being members of either House of Parliament under sub-clause (a) of clause (1) of article 83.

The Ministry of Home Affairs in its letter dated October 15, 1948 to the Constituent Assembly Secretariat has also agreed to this view.

Jaya Prakash Narayan : The following clause should be substituted for clause (2) of article 62 :

(2) The Ministers shall hold office so long as they command the confidence of the Legislature. Within a month of the formation of a new Council of Ministers it must seek the confidence of the Legislature.

Note : In all parliamentary systems of government there is a well established convention that the Ministers hold office so long as they command the confidence of the Legislature. It is therefore hardly necessary to include specifically such a provision. Clause (3) of article 62 makes it clear that the Council of Ministers shall be collectively responsible to the House of the People. If the Ministers cease to retain the support of the majority of the House of the People, they must resign. It is also hardly necessary to provide that within a month of the formation of the new Council of Ministers it must seek the confidence of the Legislature. It has been proposed to append to the Constitution an Instrument of Instructions for the President as there is one for the Governor. The manner in which the Ministers will be appointed by the President has been set out in those instructions. It has been provided therein that the President shall appoint a person who, in his judgment, is most likely to command a stable majority in Parliament as Prime Minister, and then to appoint on the advice of the Prime Minister those persons who will best be in a position collectively to command the confidence of Parliament. If the Ministers so appointed at any time cease to command the confidence of Parliament, a vote of no-confidence may be moved against the Ministry at any time.

Further, clause (2) of article 62, which provides that the Ministers shall hold office during the pleasure of the President, should be retained. There may be an occasion when the Prime Minister for reasons which to him seem sufficient requests a member of the Council of Ministers to resign. If the Minister concerned fails to comply with such request, his appointment should be terminated by the President if the Prime Minister so advises. Clause (2) of article 62 will enable the President to terminate the appointment of Ministers in such cases. This amendment cannot therefore be accepted.

Drafting Committee : That after clause (5) of article 62, the following new clause be inserted :

(5-a) In the choice of his Ministers, and the exercise of his other functions under this Constitution, the President shall be generally guided by the instructions set out in Schedule III-A, but the validity of anything done

by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.

Note: The Drafting Committee considered that it would be desirable to append to the Constitution an Instrument of Instructions for the President just as there is one for the Governors. Hence the proposed amendment.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

THE STATE EXECUTIVE

ARTICLE 131

R. K. Sidhva: That for article 131, the following be substituted: "The Governor of a State shall be appointed by the President".

Note: The Special Committee considered the mode of selection of Governors and was of the view that Governors should be directly appointed by the President and that it was not necessary to provide for a panel of candidates for such appointment. If the views of the Special Committee are accepted, then the second alternative of article 131 will have to be retained subject to the amendment already proposed by the Drafting Committee.

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari: That the alternative article 131 be deleted.

Note: If the views of the Special Committee stated in the note on the amendment proposed by the Drafting Committee are accepted, then the alternative of article 131 will have to be retained instead of being deleted.

R. R. Diwakar and S. V. Krishnamoorthy Rao: That in the alternative article 131, for the words "a panel of four candidates" the words "a panel of two candidates" be substituted.

Note: As stated in the above note, the Special Committee considered this matter and was of the view that it was not necessary to provide for a panel of candidates for the appointment of Governors.

Guptanath Singh: Election of Governor by direct voting seems unsuitable. The alternative suggestion made in article 131 is, however, more practical from the administrative point of view.

Note: This favours the alternative suggestion made in article 131 with regard to the appointment of Governors by the President. In this connection attention is invited to the remarks on the Drafting Committee's amendment.

Tajamul Husain: That for article 131 the following be substituted:

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

Note: The Special Committee considered the mode of selection of the Governors and was of the view that the Governors should be directly appointed by the President and that it was not necessary to provide for a

panel of candidates for such appointments. Accordingly, the following amendment has been suggested separately :

For article 131, the following article be substituted :

131. The Governor shall be appointed by the President by warrant under his hand and seal.

This amendment by Tajamul Husain is the same as the amendment proposed above to give effect to the views of the Special Committee.

L. N. Sahu : That the alternative article 131 be omitted.

Note : The Special Committee considered the mode of selection of the Governors and was of the view that the Governor should be directly appointed by the President.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have expressed the view that the system of elected Governors appears to be satisfactory and the alternatives and the provisions consequential thereto should be deleted.

Note : It is for the Constituent Assembly to decide which of the two alternatives of article 131 should be adopted. The Special Committee has since considered this question and has expressed the view that the Governor should be directly appointed by the President and that it is not necessary to provide for a panel of candidates for such appointment.

The West Bengal Legislative Assembly is of opinion that the Governor of a State should be appointed as provided for in article 131 (alternative).

Note : This favours the alternative suggestion made in article 131 with regard to the appointment of Governors by the President. In this connection, attention is invited to the note on the Drafting Committee's amendment.

Jaya Prakash Narayan : The following article should be substituted for article 131 :

131. The Governor shall be elected by means of a single transferable vote by an electoral college composed of the members of the Legislature of the State and the representatives of the State concerned in the Federal Parliament.

The co-existence of a Governor elected by the people and of the Chief Minister responsible to the Legislature may lead to friction. If the Governor is appointed by the President on the advice of the Federal Government out of a panel of four persons chosen by the Provincial Legislature by means of a single transferable vote, the Federal Chief Minister is likely to choose out of the panel a man of his own party even if the latter had not secured the largest number of votes. Such a situation is not likely to promote harmony in the Provincial Government and may disturb the harmony which must exist between the Federal and State authorities.

Note : The criticism that the co-existence of a Governor elected by the people and a Chief Minister responsible to the Legislature might lead to friction and consequent weakness in administration will also apply if

the Governor is elected by the members of the Legislature of the State and the representatives of the State concerned in the Federal Parliament. To meet the objection to the election of a panel of candidates for appointment to the office of Governor the Special Committee recommended that the Governors should be directly appointed by the President. It has also been proposed that the Governor should act on the advice of his Ministers in all matters. This would obviate the possibility of any friction between the Governor and his Ministers.

Drafting Committee: That for article 131, the following be substituted:

Appointment of Governor: The Governor shall be appointed by the President by warrant under his hand and seal.

Note: As regards the mode of selection of Governors, the Special Committee was of the view that Governors should be directly appointed by the President and that there need not be any provision for a panel of candidates for such appointment. Amendments in order to give effect to this suggestion have accordingly been proposed to articles 131, 132, 133, 134, 135, 138, 139 and 140.

ARTICLE 132

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari: That in clause (a) of the proviso to article 132, the words beginning with "or where there are two Houses" to the end of the clause be omitted.

Note: It has been provided in clause (a) of the proviso to article 45 that the President may, by writing under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People, resign his office. Under clause (a) of the proviso to article 132 it has been similarly provided that, in the case of a State where there are two Houses, the Governor may by writing under his hand addressed to the Speaker of the Legislative Assembly and the Chairman of the Legislative Council of the State resign his office. It is not understood why it is proposed that in such cases the Governor should address his resignation only to the Speaker of the Legislative Assembly. However, if the Governor is appointed directly by the President, it seems more appropriate that he should address his resignation to the President and clause (a) of the proviso to article 132 should be modified accordingly.

Tajamul Husain: That for clause (a) of the proviso to article 132 the following be substituted:

(2) a Governor may, by resignation under his hand addressed to the President, resign his office;

Note: It has been separately suggested that if the amendment to give effect to the views of the Special Committee mentioned above in the remarks on the amendment under article 131 be accepted, then the following

amendment would be necessary in article 132 :

For clause (a) of the proviso to article 132 the following clause be substituted :

(a) a Governor may by writing under his hand addressed to the President resign his office ;

This amendment of Tajamul Husain is virtually the same as the amendment mentioned above.

Drafting Committee : That for clause (a) of the proviso to article 132, the following be substituted :

(a) a Governor may by writing under his hand addressed to the President resign his office ;

Note : See note on the amendment proposed by the Drafting Committee to article 131.

Drafting Committee : That in clause (a) of the proviso to article 132, for the word "resignation" the word "writing" be substituted.

Note : In clause (a) of the proviso to article 132, for the word "resignation" the word "writing" should be substituted following the wording used in clause (a) of the proviso to article 56, clause (b) of article 74, clause (b) of article 77 and sub-clause (b) of clause (2) of article 82.

The amendment has been agreed to by the Drafting Committee.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the second of the two amendments suggested by it.

ARTICLE 133

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in article 133 after the word "Governor" the words "in a State", and after the words "to that office", the words "in that State" be inserted respectively.

Note : This amendment seeks to restrict the prohibition referred to in article 133 to the office of Governor held in any particular State. This is a question of policy. In practice, a Governor—particularly, an appointed Governor—is likely to be an elder statesman and after two terms of office in any particular State, lasting for ten years, will hardly be available for a third term, whether in the same State or elsewhere.

Tajamul Husain : That in article 133 the word "re-election" be deleted.

Note : This amendment has been also suggested separately being consequential to the amendment proposed to give effect to the views of the Special Committee.

Drafting Committee : That in article 133, the word "re-election" be deleted.

Note : See note on the amendment proposed by the Drafting Committee on article 131.

ARTICLE 134

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in clause (2)(a) of article 134 for the words "the State" the words "any State" be substituted and the proviso be omitted.

Note : If this amendment is accepted, then the effect would be that no person shall be eligible if he is disqualified for membership of the Legislative Assembly of any of the States; or in other words it will be necessary for such person to be qualified for membership of every State. This is impracticable, for presumably he will not satisfy the residence qualifications of each and every State. The object of this amendment will be achieved if the following amendments are made in article 134 :

(1) For clause (1) of article 134 the following clause be substituted :

(3) (1) No person shall be eligible for election as Governor of a State unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for being chosen as a member of the Legislative Assembly of the State or of any other State.

(2) In clause (2) of article 134, for the portion commencing with the words "A person shall not be eligible for election" and ending with the words "holds any office or position of emolument" the following be substituted:
A person shall not be eligible for election as Governor of a State if he holds any office or position of emolument.

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in clause (2)(b) of article 134 the words "for the time being specified in the First Schedule" be deleted.

Note : The expression "State" has been defined in article 128 to mean a State for the time being specified in Part I of the First Schedule. If the words "for the time being specified in the First Schedule" be omitted from sub-clause (b) of clause (2) of article 134, then the expression "Government of any State" would mean the Government of any State for the time being specified in Part I of the First Schedule, but the intention clearly is to prohibit the holding of any office or position of emolument under the Government of any State, whether it is in Part I or Part II or Part III of that Schedule. This amendment cannot therefore be accepted.

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in paragraph (a) of the Explanation to clause (2) of article 134 after the word "Minister" the words "member of

Parliament or of the Legislature of any State, Speaker or Chairman of a House of Legislature” be inserted.

Note: This amendment is hardly necessary, for the members of Parliament or of the Legislature of any State and the Speaker or Chairman of a House of Legislature are not persons holding any office or position of emolument under the Government of India or the Government of any State.

Tajamul Husain : (i) That in clause (1) of article 134, for the word “election” the word “appointment” be substituted; (ii) That in clause (2) of article 134 for the word “election” the word “appointment” be substituted; (iii) That in sub-clause (a) of clause (2) of article 134 for the words “the State” the words “any State” be substituted and the proviso to that sub-clause be deleted; or, alternatively (iv) That in clause (2) of the alternative article 134 for the words “the State” the words “any State” be substituted and the proviso to that clause be deleted.

Note: There is no objection to the substitution of the word “appointment” for the word “election” in clauses (1) and (2) of article 134 as a consequential amendment, but if the amendments suggested in sub-clause (a) of clause (2) of article 134 or the alternative amendments suggested in clause (2) of the alternative article 134 for the substitution of the words “any State” for the words “the State” and for the deletion of the proviso to that sub-clause or clause, as the case may be, are accepted, then the effect would be that no person shall be eligible if he is disqualified for membership of the Legislative Assembly of any of the States, or in other words, it would be necessary for such person to be qualified for membership of every State, which is impracticable, for presumably he will not satisfy the residence qualification of each and every State. The object of these amendments will be achieved if the following amendment is made for the substitution of a new article for the alternative article 134 :

For article 134 the following article be substituted :

134. No person shall be eligible for appointment as Governor of a State unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years ; and
- (c) is qualified for being chosen as a member of the Legislative Assembly of the State or of any other State.

It may however be considered if the qualification prescribed in clause (c) of the new article 134 proposed above is really necessary to be provided when the Governor is to be directly appointed by the President. The President will see that a person duly qualified for being chosen as a member of the Legislative Assembly of the State or any other State is appointed as Governor. It seems therefore sufficient to prescribe the citizenship and age qualifications of the Governor only in the Constitution.

The following amendment has accordingly been suggested separately :

For article 134 the following article be substituted, namely :

134. No person shall be eligible for appointment as a Governor unless he is a citizen of India and has completed the age of 35 years.

Drafting Committee : That for article 134, the following be substituted :

134. *Qualifications for appointment as Governor :* No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

Note : See note on the amendment proposed by the Drafting Committee to article 131.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the following redraft of article 134 :

134. (1) No person shall be eligible for election as Governor of a State unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for being chosen as a member of the Legislative Assembly of the State or of any other State.

(2) A person shall not be eligible for election as Governor of a State if he holds any office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule, or under any local or other authority subject to the control of any of the said Governments.

Explanation : For the purposes of this clause a person shall not be deemed to hold any office of profit by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I of the First Schedule ; or

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

Alternatively

134. No person shall be eligible for appointment as Governor of a State unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for being chosen as a member of the Legislative Assembly of the State or of any other State.

ARTICLE 135

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in clause (1) of article 135 the words “for

the time being specified in the First Schedule” be deleted.

Note: (1) For the reasons explained in the note on the amendment of K. Santhanam and others to article 134, this amendment cannot also be accepted.

(2) The following amendments are suggested in clause (1) of article 135 to bring it into conformity with the language used in clause (1) of article 48 as proposed to be modified and also to avoid any confusion with the provision in article 148 that the Legislature of a State shall consist of the Governor and one or two Houses :

(a) for the words “either of Parliament or” the words “of either House of Parliament or of a House” be substituted ;

(b) for the words “member of Parliament or” the words “member of either House of Parliament or of a House” be substituted ;

(c) for the words “in Parliament or” such Legislature, as the case may be, the words “in that House” be substituted.

For the reasons given in the notes under article 47, the following amendment is suggested in clause (2) of this article :

In clause (2) of article 135, for the words “or position of emolument” the words “of profit” be substituted.

The Ministry of Home Affairs has made the following suggestion with regard to this article :

Under clause (3) of article 135 the emoluments and allowances of the Governor are to be determined by the Legislature of the State. In the interests of uniformity it seems desirable that this power should vest in the Union Parliament. The proposed amendment would be all the more necessary if the Assembly decides to leave the appointment of Governors to *nomination* by the President acting on advice, a view which is likely to be pressed in the Assembly.

Note: The emoluments and allowances of the Governor of a State are charged on the revenues of the State. It was therefore considered more appropriate to vest the power of fixation of emoluments and allowances of the Governor in the Legislatures of the States. If, however, it is decided to accept the suggestion of the Ministry of Home Affairs, the following amendment would be necessary :

In clause (3) of article 135, for the words “the Legislature of the State” the word “Parliament” be substituted.

The following consequential amendments will be also necessary :

(1) In entry 69 in List I (Union List) of the Seventh Schedule, after the words “leave of absence of the President” the words “the emoluments and allowances and rights in respect of leave of absence of the Governor of a State” be inserted.

(2) In entry 12 of List II (State List) of the Seventh Schedule, the words “emoluments and allowances and rights with respect to leave of absence of the Governor of the State” be deleted.

Drafting Committee : That in clause (1) of article 135, the word "elected" be deleted.

Note : See note on the amendment proposed by the Drafting Committee to article 131.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to move an amended redraft of the article as follows :

135. (1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State for the time being specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be elected/ appointed Governor, he shall be deemed to have vacated his seat in that House, on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall have an official residence, and there shall be paid to the Governor such emoluments and allowances as may be determined by the Legislature of the State by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule :

Provided that the emoluments of the Governor shall not be less than four thousand and five hundred rupees per month.

ARTICLE 136

The Ministry of Home Affairs has made the following suggestion with respect to this article :

The Governor is required to make and subscribe an affirmation or oath in the presence of the members of the Legislature of the State. It would be preferable, on the analogy of article 49 applicable to the case of the President, if Governors were required to make and subscribe an affirmation or oath before the Chief Justice of the State or, in the latter's absence, a judge of the High Court of the State.

Note : If this suggestion is accepted, then the following amendment will be necessary :

In article 136 for the words "in the presence of the members of the Legislature of the State" the words "in the presence of the Chief Justice or, in his absence, any other judge of the High Court exercising jurisdiction in relation to the State" be substituted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 137

Note : For securing uniformity of language as referred to in the notes

under article 50, the following amendments are suggested in article 137 :

- (1) In sub-clause (b) of clause (2) of article 137, for the words "supported by" the words "passed by a majority of" be substituted ;
- (2) In sub-clause (4) of article 137, for the words "passed, supported by" the words "passed by a majority of" be substituted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 138

R. K. Sidhva has made the following observations on article 138 :

While agreeing that there is no necessity to create the post of a Deputy Governor of Province, I object to the interpretation given in the footnote to article 138 that in the event of a temporary vacancy of a Governor occurring, the Legislature or the President may provide for the Chief Justice to discharge the functions of the Governor. I am opposed to appointing a Chief Justice even for a temporary vacancy. It should not be held by a judge of the court even for a temporary purpose.

Note : There is no amendment proposed here; the footnote to article 138 is not a part of the Constitution.

Tajamul Husain : That for article 138, the following be substituted :

138. There shall be a Deputy Governor. The Speaker of the Assembly shall be *ex-officio* Deputy Governor.

Note : This amendment which seeks to provide for Deputy Governor and to make the Speaker of the Assembly *ex-officio* Deputy Governor involves a question of policy. The Drafting Committee was of opinion that whether the Governor is elected by the people or appointed by the President, it is unnecessary to have a Deputy Governor. In the Legislative Assembly of a Province, business of a more responsible and urgent character is to be transacted than in the Legislative Council. It would therefore be hardly convenient to make the Speaker of the Legislative Assembly *ex-officio* Deputy Governor. If the Governor is appointed directly by the President it may be left to the President to make such provision as he thinks fit for the discharge of the functions of the Governor in the event of any vacancy occurring in the office of the Governor and the President may provide in advance that the Chief Justice shall discharge the functions of the Governor in the event of such vacancy. In this connection attention is invited to the footnote to article 138.

Drafting Committee : That for article 138, the following be substituted :

138. *Power of the President to provide for the discharge of the functions of the Governor in certain contingencies :* The President may make such provisions as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

Note : See note on the amendment proposed by the Drafting Committee to article 131.

ARTICLE 139

Tajamul Husain : That article 139 be deleted.

Note : This amendment which is also consequential on the amendment proposed for the direct appointment of Governors by the President has also been suggested separately, to give effect to the views of the Special Committee.

Drafting Committee : That article 139 be omitted.

Note : See note on the amendment proposed by the Drafting Committee to article 131.

ARTICLE 140

Tajamul Husain : That article 140 be deleted.

Note : This amendment, which is also consequential on the amendment proposed for the direct appointment of Governors by the President, has also been suggested separately, to give effect to the views of the Special Committee.

Drafting Committee : That article 140 be omitted.

Note : See note on the amendment proposed by the Drafting Committee to article 131.

ARTICLE 142

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That to clause (a) of article 142 the following proviso be added:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subordinate to and limited by the executive power conferred by law of Parliament upon the Government of the Union.

Note : This amendment seeks to add a proviso to article 142 as a counterpart of the proviso to clause (1) of article 60. It may be accepted in the following modified form:

To article 142 the following proviso be added :

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subordinate to and limited by the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Government or authorities of the Union.

The reason for the modification suggested is that there are certain

provisions in the Constitution itself which give executive power to the Union in certain matters including matters relating to Concurrent List subjects, e.g. article 276 (a). Moreover, a law made by Parliament relating to a Concurrent List subject may confer executive power not only upon the Government of the Union but also upon certain authorities of the Union.

ARTICLE 143

Drafting Committee : (i) That in clause (1) of article 143, the words "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion" be omitted. (ii) That clause (2) of article 143 be omitted.

Note : In view of the change suggested by the committee in the mode of selection of Governors, namely, that the Governors should be nominated by the President instead of being elected by the Provinces, the Special Committee was of opinion that the references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution.

This will mean, amongst other things, the omission of the emergency provisions in articles 188 and 278.

ARTICLE 144

T. A. Ramalingam Chettiar : That for the operative paragraph of clause (1) of article 144, the following be substituted :

The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. The Ministers shall hold office during the pleasure of the Governor.

Note : This amendment seeks to bring the first paragraph of clause (1) of article 144 into line with the corresponding provision in clause (1) of article 62. The provision in clause (1) of article 144 has not been worded in the same manner as the provision in clause (1) of article 62 in view of the instructions contained in paragraph 2 of the Fourth Schedule. There is no objection to the amendment being accepted.

T. A. Ramalingam Chettiar : That clause (4) of article 144 be deleted.

Note : It is not understood why it is proposed to delete clause (4) of article 144. Clause (4) of article 144 is necessary in view of the instructions set out in the Fourth Schedule and this amendment cannot be accepted.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (6) of article 144 after the word "shall" the words "subject to the provisions of clause (4) of this article" be inserted.

Note: This amendment is hardly necessary as the instructions referred to in clause (4) of article 144 are intended for the guidance of the Governor and are not intended to be legally enforceable restrictions on the exercise of his discretion in the matter of appointment and dismissal of Ministers. The Special Committee has however expressed the opinion that in view of the change suggested by that committee in the mode of selection of Governors, namely, that the Governor should be nominated instead of being elected, all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution. If the views of the Special Committee be accepted, then clause (6) of article 144 will have to be omitted.

Boniface Lakra: That for the proviso to clause (1) of article 144, the following be substituted:

Provided that in the States of Bihar, Central Provinces and Berar and Orissa, there shall be a Tribal Minister in charge of tribal welfare who may, in addition, be in charge of the Scheduled Areas. There shall also be a Harijan Minister in charge of the welfare of the Scheduled Castes and the backward classes or any other work.

Note: This amendment involves a question of policy. The existing proviso to clause (1) of article 144 was inserted to give effect to the recommendations of the Sub-Committee on the Excluded and Partially Excluded Areas (Other than Assam) which were subsequently adopted by the Advisory Committee on Minority Rights.

Note on articles 143 and 144: In view of the change suggested by the committee in the mode of selection of Governors, namely, that the Governors should be nominated by the President instead of being elected by the Provinces, the Special Committee was of the opinion that the references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution.

This will mean, amongst other things, the omission of the emergency provisions in articles 188 and 278. The following amendments will then be necessary in articles 143 and 144:

- (1) In clause (1) of article 143, the words "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion" be omitted.
- (2) Clause (2) of article 143 be omitted.
- (3) Clause (6) of article 144 be omitted.

The amendments necessary in the other articles will be indicated in the proper place.

If, however, it is decided that article 188 which provides power to the Governor to suspend the Constitution in grave emergencies should be retained, then the reference to the exercise of the functions of the Governor in his discretion will have to be also retained in article 143, for if the Governor in the exercise of his functions under article 188 is required to

act on advice in the matter of suspension of the operation of the Constitution under that article then the Ministers will hardly advise him to take such action which will put an end to their administration and the Governor will therefore have to act in his discretion in such matters. Accordingly, if article 188 is retained in its present form, amendments Nos. (1) and (2) proposed above in article 143 will not be necessary; but only amendment No. (3) which seeks to omit clause (6) of article 144 will be necessary.

Jaya Prakash Narayan : The following clauses should be substituted for clauses (1), (4) and (6) of article 144:

144. (1) The Chief Minister shall be appointed by the Governor, and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister :

Provided that in the States of Bihar, Central Provinces and Berar and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of Scheduled Castes and backward classes or any other work.

144. (4) The Council shall be collectively responsible to the Legislature of the State and shall hold office as long as the former commands the confidence of the Legislature.

Note : This amendment in so far as it seeks to bring the provisions of the first paragraph of clause (1) of article 144 into line with the corresponding provision in clause (1) of article 62 may be accepted. As has already been pointed out in connection with a similar amendment proposed by the sponsor of this amendment in respect of the provisions relating to Union Ministers, it is hardly necessary to include specifically a provision that the Ministers will hold office as long as they command the confidence of the Legislature for in all parliamentary systems of government there is such a convention. The existing clause (4) of article 144 should not be omitted as the clause is necessary in view of the instructions set out in the Fourth Schedule. The manner in which the Ministers will be appointed by the Governor has been described in detail in those instructions. If the Ministers so appointed cease to command the confidence of the Legislature at any time, a vote of no-confidence may be moved against the Ministry at any time. Further, the provision that the Ministers shall hold office during the pleasure of the Governor should also be retained for reasons already explained in connection with the retention of the corresponding provision in article 62.

It has been separately proposed to insert a new clause (1-a) after clause (1) of article 144 to provide that the Council of Ministers shall be collectively responsible to the Legislative Assembly as in clause (3) of article 62 (*see infra*).

The following amendment may therefore be proposed in place of this amendment:

For clause (1) of article 144 the following clauses be substituted :

(1) The Chief Minister shall be appointed by the Governor and the other

Ministers shall be appointed by the Governor on the advice of the Chief Minister. The Ministers shall hold office during the pleasure of the Governor :

Provided that in the States of Bihar, Central Provinces and Berar and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and backward classes or any other work.

(1-a) The Council shall be collectively responsible to the Legislative Assembly of the State.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment suggested in the note.

Drafting Committee : That after clause (1) of article 144, the following new clause be inserted :

(1-a) The Council shall be collectively responsible to the Legislative Assembly of the State.

Note : Sub-clause (3) of article 62 contains the provision that the Council of Ministers shall be collectively responsible to the House of the People. There is no corresponding provision in article 144 with respect to the Council of Ministers in the States in Part I of the First Schedule, and the absence of such a provision may give rise to the inference that the Council of Ministers in the States in Part I of the First Schedule shall not be collectively responsible to the Legislative Assembly of the State. It would therefore be better to bring the provisions of article 144 into line with the provisions contained in article 62. Hence the proposed amendment.

The Drafting Committee : That clause (6) of article 144 be omitted.

Note : See notes on the amendments proposed by the Drafting Committee to article 143.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment. The committee also redrafted clause (4) of article 144 as follows :

144. (4) In the choice of his ministers and in the exercise of his other functions under this Constitution the Governor shall be generally guided by the Instructions set out in the Fourth Schedule, but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions.

ARTICLE 147

K. Santhanam, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai : That in clause (c) of article 147, for the word "consideration" the word "reconsideration" be substituted and the words "by a Minister but which has not been considered by the Council" be deleted.

Note : Clause (c) of article 147 is not intended to give power to the Governor to re-open any decision already taken by the Council of Ministers for further consideration of the Council. It is merely intended to give power to the Governor to require that a case on which a decision has been taken by a Minister but which has not been considered by the Council of Ministers should be submitted to the Council for consideration as occasionally cases are disposed of finally by the Minister in charge without reference to the Council of Ministers if the Minister does not think them to be of such importance as to be considered by the Council.

SECOND SCHEDULE

Part I—Paragraph 1

L. N. Sahu : That in paragraph 1, for the figures '5,500' and '4,500' the figures '3,000' and '2,000' be respectively substituted.

Note : This amendment involves questions of policy.

Paragraph 3

K. Santhanam : That in paragraph 3, the words "and to return to their normal place of residence after relinquishing such appointment" be inserted at the end.

Note : No provision for travelling allowances to the Governors on relinquishment of duties was made in the Government of India (Governors' Allowances and Privileges) Order, 1936, which is at present applicable to all Governors of the Provinces. This Order provides only for payment of travelling allowances on appointment to take up the duties as Governor. In practice, an outgoing Governor usually leaves his Province shortly before his successor arrives, so that at the moment of leaving he is still Governor and, as such, entitled to use the railway saloons and motor cars provided for his use during his term of office. The amendment is hardly necessary. Cf. the position, let us say, of the Chief Justice of India after retirement.

NEW SCHEDULE III-A

Drafting Committee : That after the Third Schedule, the following new Schedule be inserted :

Schedule III-A

[Article 62(5a)]

INSTRUCTIONS TO THE PRESIDENT

1. In these instructions, unless the context otherwise requires, the term "President" shall include every person for the time being discharging the functions of, or acting as, the President according to the provisions of this Constitution.

2. In making appointments to his Council of Ministers, the President shall use his best endeavours to select his Ministers in the following manner, that is to say—to appoint a person who, in his judgment, is most likely to command a stable majority in Parliament as the Prime Minister, and then to appoint on the advice of the Prime Minister those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of Parliament. In so acting the President shall bear constantly in mind the need for fostering a sense of joint responsibility among the Ministers.

3. In all matters within the scope of the executive power of the Union the President shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers.

4. Before making any appointment of a temporary judge of a High Court under clause (2) of article 198 or an additional judge of a High Court under article 199, the President shall always consult the Chief Justice of the High Court.

5. The President shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in public life, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments.

Note The Drafting Committee recommended that it would be desirable to append to the Constitution an Instrument of Instructions for the President just as there was one for the Governors.

It is accordingly suggested that after the Third Schedule, new Schedule III-A be inserted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to redraft new Schedule III-A as follows:

New Schedule III-A

[Article 62(5a)]

INSTRUCTIONS TO THE PRESIDENT

1. In these instructions, unless the context otherwise requires, the term "President" shall include every person for the time being discharging the functions of, or acting as, the President according to the provisions of this Constitution.

2. In making appointment to his Council of Ministers, the President shall use his best endeavours to select his Ministers in the following manner, that is to say—to appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime

Minister, and then to appoint on the advice of the Prime Minister those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of Parliament.

3. In all matters within the scope of the executive power of the Union, the President shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers.

4. (1) The President shall make rules for the constitution of an Advisory Board consisting of not less than fifteen members of the Houses of Parliament to be elected by both Houses in accordance with the system of proportional representation by means of the single transferable vote for the purpose of advising the President in the matter of making certain appointments under this Constitution and shall take all necessary steps for the due constitution of such Board as soon as may be after the commencement of this Constitution.

(2) Such rules shall provide that the Leader of the Opposition, if any, in either House of Parliament shall, if he is not elected to the Advisory Board, be nominated to the Board by the President.

(3) Such rules shall also define the term of office of the members of the Advisory Board and its procedure and may contain such ancillary provisions as the President may consider necessary.

5. (1) In making any appointment of—

(a) the Chief Justice of India or any other judge of the Supreme Court ;

(b) the Chief Justice or any other judge of a High Court ;

(c) an Ambassador in a foreign State ;

(d) the Auditor-General of India ;

(e) the Chairman or any other member of the Union Public Service Commission ;

(f) any member of the Commission to superintend, direct and control all elections to Parliament and elections to the offices of President and Vice-President,

the President shall consult the Advisory Board constituted under paragraph 4.

(2) The President shall also consult the Advisory Board so constituted in making appointment by virtue of the powers conferred on him by this Constitution to any other office under the Government of India or the Government of a State *other than the office of Governor of a State, if Parliament by resolutions passed by both Houses recommend to the President that the Advisory Board should be consulted in making appointment to such office.

6. (1) In making appointment of judges of the Supreme Court and of the High Courts, the President shall before obtaining the advice of the Advisory

*The words "other than the office of Governor of a State" will have to be retained in this sub-paragraph only if the second alternative is adopted in article 131.

Board follow the following procedure :

- (a) In the case of appointment of the Chief Justice of India, he shall consult the judges of the Supreme Court and the Chief Justices of the High Courts within the territory of India except the States for the time being specified in Part III of the First Schedule.
 - (b) In the case of appointment of a judge of the Supreme Court other than the Chief Justice of India, he shall consult the Chief Justice of India and the other judges of the Supreme Court and also the Chief Justices of the High Courts within the territory of India except the States for the time being specified in Part III of the First Schedule.
 - (c) In the case of appointment of the Chief Justice of a High Court, he shall consult the Governor of the State in which the High Court has its principal seat, and the Chief Justice of India.
 - (d) In the case of appointment of a judge of a High Court other than the Chief Justice, he shall consult the Governor of the State in which the High Court has its principal seat, the Chief Justice of India and the Chief Justice of the High Court.
- (2) The President shall place the recommendations of the authorities consulted by him under sub-paragraph (1) before the Advisory Board at the time of obtaining the advice of that Board with regard to any appointment referred to in that sub-paragraph.
7. When in making any of the appointments referred to in paragraph 5 the recommendation of the Advisory Board has not been accepted, the President, if so requested by the Advisory Board, shall cause the record of their dissent from the decision taken by the President and the reasons therefor to be laid before each House of Parliament together with a memorandum explaining the reasons for non-acceptance of such recommendation.
8. The President shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments.

FOURTH SCHEDULE

K. Santhanam : That the Fourth Schedule be omitted.

Note : The insertion of the instructions to the Governors in the Fourth Schedule follows the decision of the Constituent Assembly, *vide* paragraph 14 of the Report of the Provincial Constitution Committee as adopted by the Constituent Assembly during its July 1947 session. The instructions are necessary, because the mode of appointment of the Prime Minister, the injunction to act upon the advice of Ministers, etc. are not contained in the

Constitution itself. It is preferable not to put them into the body of the Constitution, because they are conventions rather than legal rules; at the same time, they should appear somewhere. Under the Government of India Act, 1935, they appeared as instructions from the Sovereign; the Constituent Assembly being a sovereign body, they can now appear as instructions from that Assembly in the form of a Schedule to the constitutional instrument.

K. Santhanam : That for paragraph 2 of the Fourth Schedule, the following be substituted :

In making appointments to his Council of Ministers, the Governor shall appoint as Chief Minister the person who, in his judgment, is most likely to command a stable majority in the Legislature and other Ministers on the advice of the Chief Minister. In his relations with the Ministers, he shall bear constantly in mind the need for fostering the joint responsibility of the Ministers under the leadership of the Chief Minister.

Note : The new paragraph 2 proposed for substitution by this amendment does not differ substantially from the existing paragraph 2 of the Fourth Schedule, except that it does not make any reference as to the inclusion, so far as practicable, of members of important minority communities in the Ministry. If this amendment is to be accepted, then it may be redrafted as follows :

For paragraph 2 of the Fourth Schedule, the following paragraph be substituted :

2. The Governor shall appoint as Chief Minister the person who, in his judgment, is most likely to command a stable majority in the Legislature and shall appoint the other Ministers on the advice of the Chief Minister. In his relations with his Ministers the Governor shall bear constantly in mind the need for fostering a sense of joint responsibility among the Ministers under the leadership of the Chief Minister.

K. Santhanam : That in paragraph 4 of the Fourth Schedule for the words "do all that in him lies" the words "use his counsel and influence" be substituted.

Note : The expression "do all that in him lies" in paragraph 4 is more comprehensive than the expression "use his counsel and influence" and may therefore be retained. In an extreme case, when for example, a Ministry is corrupt and insists on following a course of action which is against the wishes and interests of the people, the Governor may have to dismiss the Ministers.

Boniface Lakra : That in paragraph 2 of the Fourth Schedule after the words "those persons" the words "among whom there shall be an Adibasi or a tribal" be inserted.

Note : This amendment involves a question of policy. The expression "including so far as practicable members of important minority communities" in paragraph 2 of the Fourth Schedule will enable the

appointment of an Adibasi or a tribal who would undoubtedly come under the category of important minority communities in some Provinces, especially in Bihar. No special provision for the purpose therefore appears to be necessary. Attention is also invited to the proviso to clause (1) of article 144 which requires that in the States of Bihar, Central Provinces & Berar and Orissa there shall be a Minister in charge of tribal welfare. This amendment is therefore hardly necessary.

Note : The Special Committee was of opinion that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution. To give effect to this suggestion, the following amendment would be necessary in the Fourth Schedule :

In paragraph 3 of the Fourth Schedule, the words "save in relation to functions which he is required by or under this Constitution to exercise in his discretion" be omitted.

This amendment will not, however, be necessary if article 188 is retained in its present form, and the reference to the exercise of functions by the Governor in his discretion in article 143 be retained.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to redraft the Fourth Schedule as follows:

Fourth Schedule

[Article 144(4)]

INSTRUCTIONS TO THE GOVERNORS OF STATES IN PART I OF THE FIRST SCHEDULE

1. In these instructions, unless the context otherwise requires, the term "Governor" shall include every person for the time being discharging the functions of the Governor according to the provisions of this Constitution.

2. In making appointments to his Council of Ministers, the Governor shall use his best endeavours to select his Ministers in the following manner, that is to say—to appoint a person who has been found by him to be most likely to command a stable majority in the Legislature as the Chief Minister, and then to appoint on the advice of the Chief Minister those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature.

3. In all matters within the scope of the executive power of the State, save in relation to functions which he is required by or under this Constitution to exercise in his discretion, the Governor shall, in the exercise of his powers conferred upon him, be guided by the advice of his Ministers.

4. (1) The Governor shall make rules for the constitution of an Advisory

Board consisting of not less than fifteen members of the Legislature of the State to be elected by the members of that Legislature in accordance with the system of proportional representation by means of the single transferable vote for the purpose of advising the Governor in the matter of making certain appointments under this Constitution, and shall take all necessary steps for the due constitution of such Board as soon as may be after the commencement of this Constitution.

(2) Such rules shall provide that the Leader of the Opposition, if any, in the Legislature or either House of the Legislature shall, if he is not elected to the Advisory Board, be nominated to the Board by the Governor.

(3) Such rules shall also define the terms of office of the members of the Advisory Board and its procedure and may contain such ancillary provisions as the Governor may consider necessary.

5. (1) In making any appointment of—

(a) the Auditor-in-Chief for the State;

(b) the Chairman or any other member of the State Public Service Commission;

(c) any member of the Commission to superintend, direct and control all elections to the Legislature of the State and elections to the office of Governor of the State/*elections to constitute a panel for the purpose of the appointment of a Governor of the State,

the Governor shall consult the Advisory Board constituted under paragraph 4.

(2) The Governor shall also consult the Advisory Board so constituted in making appointment by virtue of the powers conferred on him by this Constitution to any other office under the Government of the State, if the Legislature of the State by resolution or resolutions passed by the House or, as the case may be, the Houses of the Legislature recommend to the Governor that the Advisory Board should be consulted in making appointment to such office.

6. When in making any of the appointments referred to in paragraph 5 the recommendation of the Advisory Board has not been accepted, the Governor, if so requested by the Advisory Board, shall cause the record of their dissent from the decision taken by the Governor and the reasons therefor to be laid before the Legislature of the State together with a memorandum explaining the reasons for non-acceptance of such recommendation.

7. Without prejudice to the generality of his powers as to reservation of Bills, the Governor shall not assent to, but shall reserve for the consideration

*The words "elections to constitute a panel for the purpose of the appointment of a Governor of the State" will have to be used in this clause in place of the words "elections to the office of Governor of the State" if the second alternative is adopted in article 131.

of the President, any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill.

8. The Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the State, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments.

7. The Legislature

THE UNION PARLIAMENT

ARTICLE 66

Jaya Prakash Narayan : The Federal Parliament should be unicameral and therefore all provisions with regard to the Council of States should be dropped.

As pointed out by Prof. Laski, "no safeguard necessary to the units of a federation requires the protective armour of a second chamber". All the requisite protection is secured (a) by the terms of the original distribution of powers embodied in the Constitution, and (b) by the right of judicial review possessed by the court. The system of indirect election is pernicious. No second chamber has so far satisfactorily discharged the function of a revising chamber. It has acted only as a check to progress.

Note : This amendment involves a question of policy. It has already been decided by the Constituent Assembly that the Federal Parliament should consist of two chambers. In almost all the modern constitutions of the federal type there is a second chamber. This amendment cannot therefore be accepted.

ARTICLE 67

R. R. Diwakar and S. V. Krishnamoorthy Rao : That for clause (1) of article 67, the following be substituted :

The Council of States shall consist of not more than two hundred and fifty members, of whom—

(a) fifteen members shall be co-opted by the Council in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of States.

That in clause (2) for the words "to be nominated by the President" the words "to be co-opted" be substituted.

Note : These amendments which seek to substitute co-option for

nomination of members of the Council of States involve a question of policy.

B. Pattabhi Sitaramayya and others* : That in clause (1) of article 67, the proviso be deleted.

Note : This amendment may be accepted. Both the Drafting Committee and the Special Committee have also recommended this amendment [See amendment proposed by Drafting Committee to article 67].

B. Pattabhi Sitaramayya and others* : In clause (2) of article 67, sub-clauses (a), (b), (c) and (d) be deleted and the following be substituted :

Literature, art, education and science, pure or applied.

Note : The Special Committee has considered this amendment and recommended that for sub-clauses (a), (b), (c) and (d) of clause (2) of article 67 the following should be substituted :

Letters, art, science and social services.

B. Pattabhi Sitaramayya and others* : That in clause (6) of article 67, a section dealing with the positive qualifications of the voter, preferably in the fundamental rights, and another section dealing with the disqualifications specifically (details to be worked out by an Act of Parliament) be inserted.

Note : It is not possible to deal with amendments which are in the nature of general suggestions. The danger of incorporating provisions relating to the franchise in the chapter on fundamental rights is that election disputes may be taken to the ordinary courts of law instead of being settled by election tribunals. The franchise should therefore be dealt with separately rather than in the chapter dealing with fundamental rights. The Special Committee has proposed to omit clause (6) of article 67 and clause (2) of article 149 and to insert a new article 289-B in Part XIII of the Draft containing provisions similar to those contained in the above two clauses relating to adult franchise so that those provisions may apply not only to the elections to the House of the People but also to all elections to the Legislatures, or where the Legislatures are bicameral, to the Lower Houses of the Legislatures, of all States including the States for the time being specified in Part III of the First Schedule. The grounds for disqualification which are specified in clause (6) of article 67 and in clause (2) of article 149 will also be specified in the new article 289-B, the details being left to be prescribed by Acts of the appropriate Legislature.

B. Pattabhi Sitaramayya and others* : That clause (9) of article 67 be rewritten in the light of what has happened to the States since the Drafting Committee's Report.

Note : The final draft of clause (9) of article 67 may be left to be settled after the position of the States as a result of the various mergers has been fully ascertained.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

[The Federal Court and the Chief Justices of the Provincial High Courts have expressed the view that persons having special knowledge or practical experience of law may perhaps also be included among the members to be nominated under articles 67(2)(a) and 150(3)(a).

No special representation for such class of persons appears to be necessary in view of the fact that they are certain to be adequately represented in the elected element of the Union Parliament. In this connection the notes under article 67 containing the views of the Drafting Committee and the Special Committee separately recorded may be seen.]

R. K. Sidhva : (i) That the following new sub-clause be inserted after sub-clause (d) of clause (2) of article 67 :

(e) Cantonment Administration.

(ii) That the following proviso be added to sub-clause (a) of clause (5) of article 67 :

Provided however that two representatives of the people shall be chosen directly by the voters residing in all cantonments of India, situated in the territories of different States, but grouped together to form two constituencies so as to return two representatives.

Note : No special representation for persons having special knowledge or practical experience in respect of cantonment administration appears to be necessary in view of the fact that they are certain to be adequately represented in the elected element of the Union Parliament. In this connection the notes under article 67 containing the views of the Drafting Committee and of the Special Committee separately recorded may be seen.

The cantonments being within the territory of the States, all voters of such cantonments will have the opportunity of sending representatives to the House of the People. This amendment however seeks to provide that two special constituencies should be formed comprising all cantonments in India for the return of two representatives to the House of the People. This involves a question of policy.

The Madras Legislative Council has suggested that for clause (3) of article 67, the following clause should be substituted :

(3) The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall be elected by the people directly from the territorial constituencies based and constituted on property, trade, educational and taxation qualifications superadded to adult suffrage.

Note : This amendment seeks to make a departure from the decision already taken by the Constituent Assembly as to the manner of election of representatives of the States to the Council of States and therefore involves a question of policy.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that the following new sub-clause (e) should be added to clause (2) of article 67 :

(e) journalism, commerce, industries and law.

Note : No special representation for persons having special knowledge or practical experience in "journalism, commerce, industry and law" appears to be necessary in view of the fact that they are certain to be adequately represented in the elected element of the Union Parliament.

Drafting Committee : (i) That for clause (1) of article 67, the following clauses be substituted :

(1) The Council of States shall consist of not more than two hundred and fifty members of whom—

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article ; and

(b) the remainder shall be representatives of the States.

(1-a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.

(ii) That for clause (2) of article 67, the following clause be substituted :

(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

Letters, art, science and social services.

(iii) That in sub-clause (b) of clause (5) of article 67, for the words "directly chosen by the voters", the words "chosen either directly by the voters themselves or by persons elected for the purpose by the voters" be substituted.

(iv) That in sub-clause (a) of clause (5) of article 67, after the words "each such constituency shall", the words "save in the case of constituencies having seats reserved for the purposes of article 292 of this Constitution" be inserted.

(v) That to sub-clause (c) of clause (5) of article 67, the following proviso be added :

Provided that nothing in this sub-clause shall apply to constituencies having seats reserved for the purposes of article 292 of this Constitution.

(vi) That clause (6) of article 67 be omitted.

Note on amendments (i), (ii), (iv), (v) and (vi) : Article 292 and article 294 of the Draft Constitution provide for reservation of seats for certain minorities in the Legislatures both at the Centre and in certain units. This follows the recommendations of the Advisory Committee as adopted by the Constituent Assembly during the last August session.

The exact mode of reservation has not been laid down in the Draft Constitution, but we have been in correspondence with Provincial Governments, and certain difficulties have disclosed themselves which are best illustrated by taking the case of Bombay.

Bombay has a population of about 20 millions according to the census of 1941, and is entitled to send 33 members in all to the House of the

People (on the scale of one member for every 6,25,000 of the population which is the average for India as a whole). The reservations under article 292 on the same scale come to 3 seats for Muslims, 3 for the Scheduled Castes, 3 for the Scheduled Tribes and 1 for Indian Christians making a total of 10, the remaining 23 being general seats.

Let us consider the Indian Christian reserved seat. There are two ways of making the reservation :

- (1) we may take that one of the 23 general constituencies in which the Indian Christian population is most concentrated and allot the reserved seat to that constituency, in addition to the general or unreserved seat ;
- (2) we may create a special constituency for the reserved seat ; the special constituency will necessarily have to embrace the entire Province, since there is to be only one reserved seat for the whole Province.

Each of these methods of reservation has its advantages and disadvantages. If we adopt the first mode, the process of election will be comparatively simple, the polling being confined to the single general constituency selected for the purpose and every voter being entitled to vote both for the reserved and unreserved seats. But as against simplicity, there will be the drawback that the rest of the electorate in the Province, including Indian Christians, will be deprived of any voice in the election. The second mode of reservation undoubtedly gives every voter an opportunity of voting, but the process of election will be correspondingly more complicated. In fact, under adult suffrage, with a joint electorate, there may be as many as 10 million voters voting for a single seat, and a Province-wide election on this scale will have to be arranged for not merely at every general election but at every by-election. If a similar mode of reservation is adopted for all the other minorities as well, the difficulties will be multiplied proportionately.

For these reasons, as well as for the more fundamental reason that a constitution which forbids discrimination on the ground of race or religion or community ought not itself to prescribe reservation of seats, there will doubtless be proposals to amend the Draft by doing away with reservations of any kind even for a limited period. This however raises a large question of policy.

Assuming for the moment that the reservation provisions are to be retained, we shall have to make certain minor changes in the Draft. For, if the reservation is made in the first of the two ways indicated above, it is obvious that the single general constituency selected for the purpose will have an additional seat allotted to it, and the result may well be that the average population per seat will fall below the limit of 500,000 prescribed in article 67(5)(b). If, on the other hand, the reservation is made in the second way, we may have a single seat in a constituency with a population

of 20 millions, which is much higher than the limit of 750,000 prescribed in the same provision. Similarly, in whichever of the two ways the reservation is made, there will be a departure from the rule laid down in article 67(5) (c). It is therefore suggested that these provisions as well as the similar provisions in article 149 relating to the unit legislatures should be amended so as to make it clear that in calculating the figures, constituencies where seats have been reserved for minority communities should be left out of account.

The following suggestions for amendment of clause (5) of article 67 are accordingly made below :

(a) In sub-clause (b) of clause (5) after the words "each such constituency shall" the words "save in the case of constituencies having seats reserved for the purposes of article 292 of this Constitution" be inserted [See (iv)].

(b) To sub-clause (c) of clause (5) the following proviso be added :

Provided that nothing in this sub-clause shall apply to constituencies having seats reserved for the purposes of article 292 of this Constitution [See (v)].

While accepting these amendments, the Drafting Committee was of the view that clause (1) of article 67 should provide that the Council of States must consist of not more than 250 members (instead of exactly 250 as provided in the existing clause), and that the allocation of these seats among the States should be indicated in a Schedule to the Constitution. In the case of the House of the People, the manner in which seats shall be allotted to each constituency has been indicated in sub-clauses (b) and (c) of clause (5) of article 67.

The Drafting Committee was further of the view that the proviso to clause (1) of article 67 should be omitted as the limit prescribed therein might no longer hold good in view of the various mergers that have now taken place among the States specified in Part III of the First Schedule.

The committee accordingly recommended that the following further amendments should be made in article 67 :

(1) In clause (1), for the words "two hundred and fifty members" the words "not more than two hundred and fifty members" be substituted.

(2) The proviso to clause (1) be omitted.

(3) After clause (1), the following clause be inserted :

(1-a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B [Amendment No. (i)].

The Drafting Committee further expressed the view that the proposed Schedule III-B should for the present be left blank and should be filled in at a later stage before the Constitution was finally passed, when the position of the Indian States resulting from the various "mergers" now taking place had become clearer.

The Indian Merchants' Chamber, Bombay, in a representation* to the President of the Constituent Assembly has complained that no special representation for commerce and industry has been provided for in the Houses of Parliament, although the Constituent Assembly had already agreed that not more than twenty-five members of the Council of States should be returned by functional constituencies or panels constituted on the lines of the provisions in section 18(7) of the Irish Constitution of 1937, and under the Irish Constitution "industry and commerce including banking, finance, accountancy, engineering and architecture" is one of the panels for purposes of functional representation. The Chamber has further stated that it is difficult to reconcile the explanation offered by the Drafting Committee for eliminating the proposal for functional panels for the Council of States (*viz.*, that the panel system in the Irish Constitution has proved unsatisfactory in practice) with the provision in article 150 wherein the committee has prescribed the panel system for the Provincial Council. The Chamber has also questioned the propriety of excluding commerce and industry from representation on the ground that they are certain to be adequately represented in the elected element of the Union Parliament and the Legislatures of the States owing to adult suffrage and has expressed the view that the proposal of the Drafting Committee will, apart from involving an element of injustice to an important section of the community, result in depriving the future Houses of Parliament and the Legislatures of the States of the contribution and services of representatives with practical experience in the special problems with which they are directly concerned. The Chamber has pleaded for the provision of adequate direct representation for trade, commerce and industry in the Houses of Legislature both at the Centre and in the Provinces, organized Chambers of Commerce being chosen as the medium for such special representation.

The Drafting Committee has already given its reasons for departing from the decision of the Constituent Assembly and for excluding special representation for commerce and industry in the footnote to article 67(2). As regards functional representation and the panel system for the second chambers in the States, the Drafting Committee has retained it reluctantly, because (a) to replace it by nomination, as at the Centre, would mean creating a second chamber, two-thirds of which would consist of nominated members, (b) a second chamber in the States is not obligatory, so that if a chamber composed as prescribed in the Constitution is not considered satisfactory, the State concerned need not have a second chamber at all. In fact, it is expected that most States would have a single chamber. If however it is decided to provide for the representation of commerce and industry in the Council of States, then for sub-clause (c) of clause (2) of

*Similar representations have been received from certain other Chambers of Commerce also.

article 67 the following sub-clause should be substituted, namely :

(c) industry, commerce, engineering and architecture.

This would bring it into line with the provision in the Irish Constitution.

For reasons already given in the letter of the Chairman of the Committee to the President* and in the footnote to article 67(2), the Drafting Committee was of the view that no special provision for representation of commerce and industry in the Council of States need be made.

The Special Committee was of opinion that for sub-clauses (a), (b), (c) and (d) of clause (2) of article 67 the following should be substituted :

Letters, art, science and social services [Amendment No. (ii)].

The Special Committee was also of opinion that the number of members to be nominated by the President in the Council of States should be reduced to twelve. The Special Committee otherwise agreed to the recommendations of the Drafting Committee with respect to this article.

The Special Committee was also of the view that the provisions relating to adult franchise contained in this article should be made applicable to all elections to the Lower Houses of the Legislatures of all States including the States in Part III of the First Schedule.

Amendments (i), (ii), (iv), (v) and (vi) have been proposed to give effect to the views of the Special Committee.

Note on amendment No. (iii) : Under clause 5(a) of article 67 the House of the People has to consist of representatives chosen directly by the voters. Similarly, under clause (1) of article 149 the Legislative Assembly of each State has to consist of members chosen by direct election. Thus the Draft Constitution provides only for direct election to the popular Houses. There is a strong feeling in certain quarters that with the introduction of adult franchise elections should be indirect rather than direct; that is to say, members of the Legislature should be chosen by electoral colleges who in their turn will be chosen by the adult voters. For example, there may be, for each village, a village panchayat to be elected by the adult villagers and the members of the various village panchayats with the addition, perhaps, of similarly chosen members of municipal boards of the various towns in each constituency will form the electoral college for that constituency. But to enable us to adopt this or any other form of indirect election, it is obviously necessary that the Constitution Act should not make direct elections obligatory. Hence the proposed amendment (iii).

Under this amendment, the actual decision whether the elections are to be direct or indirect will be left to Parliament under article 290.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the above amendments proposed by it [except (iii)] confirming the view that all members of the House of the People and the Legislative Assemblies of States should be directly chosen.

*See Vol. III, Doc. 6.

The Committee also decided to delete the proviso to clause (1) of the article as also the words "of India" in sub-clause (b) of clause (5).

ARTICLE 68

B. Pattabhi Sitaramayya and others* : That in clause (1) of article 68, the word "made" and the words "by Parliament by law" be omitted and the words "contained in Schedule I(A)†" be substituted.

Note : The details about the manner of retirement of the members of the Council of States have been left to be provided by Parliament by law as the Drafting Committee considered it unnecessary to burden the Constitution with these details.

B. Pattabhi Sitaramayya and others* : That in the proviso to clause (2) of article 68, after the word "President" the words "with the consent of the Parliament" be inserted.

Note : There is no objection to this amendment. In England, under the Parliament Act of 1911, the duration of Parliament is five years. Extension of the term even in war-time requires an Act of Parliament passed in the ordinary way.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided that for the words "the President" in the proviso to clause (2) of article 68 the words "Parliament by law" be substituted.

NEW ARTICLE 68-A

Drafting Committee : That after article 68, the following new article be inserted :

68-A. A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

- (a) is a citizen of India ;
- (b) is, in the case of a seat in the Council of States, not less than thirty-five years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age ; and
- (c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.

Note : Article 152 prescribes an age qualification for members of State Legislatures. There is no corresponding provision for members of Parliament. There is, moreover, a strong feeling in certain quarters that a provision prescribing or permitting the prescription of educational and other qualifications for membership both of Parliament and of the State Legislatures should be included in the Draft. If any standard of qualifications

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†New schedule to be drafted.

is to be laid down for candidates for membership it must be so precise that an election tribunal will be able to say, in a given case, whether the candidate satisfied it or not. To formulate precise and adequate standards of this kind will require time. Further, if any such qualifications are laid down in the Constitution itself, it would be difficult to alter them if circumstances so require. The best course would, therefore, be to insert an enabling provision in the Constitution and leave it to the appropriate legislature to define the necessary standards later. Whatever qualifications may be prescribed, one of them would certainly have to be the citizenship of India.

It is accordingly proposed to insert this new article 68-A.

[For the corresponding provision in respect of State Legislatures *see* the amendment proposed under article 152.]

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 69

B. Pattabhi Sitaramayya and others*: That in clause (1) of article 69, before the words "six months" the words "not more than" be inserted, and the word "not" be deleted.

Note: The wording of clause (1) of article 69 is based on that of section 19 of the Government of India Act, 1935, as originally enacted. The wording of section 20 of the Canadian Constitution and section 6 of the Australian Constitution is also similar: "There shall be a session of the Parliament once at least in every year so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session". In the absence of any strong reasons to the contrary, it is best to retain an established form of words.

NEW ARTICLE 69-A

R. K. Sidhva: That the following new article be added at an appropriate place:

Parliament shall remain in session for at least 9 months in a year with a short interval during that period.

Note: There is nothing in the Constitution which would prevent Parliament from being summoned more frequently than at present. There is also nothing in the Constitution to prevent Parliament from sitting for longer periods in one session. It would be for the Government of the day to advise the President to summon or prorogue Parliament in accordance with the nature of the business to be transacted in Parliament. It is therefore unnecessary to fix a minimum time-limit during which Parliament shall remain in session.

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ARTICLE 70

M. Venkatarangaiya questions the necessity for the provision enabling the head of the executive under responsible government to send messages as provided in clause (2) of article 70 to either House of the Legislature with respect to any Bills pending therein and apprehends that it may create friction between him and his Council of Ministers if messages are sent at the discretion of the head of the executive.

He makes a similar observation with regard to clause (2) of article 154 with respect to the Legislatures of the States.

Note: Presumably, the messages will be sent on "advice". Therefore, there is no chance of friction. Bills may occasionally have to be sent back with a message for reconsideration of specific matters. This provision is therefore necessary.

ARTICLE 71

Jaya Prakash Narayan: Article 71 should be dropped.

Under article 70 the President may address the Legislature in the beginning of the session if necessary. The policy of the Government should be embodied in the statement of the Chief Minister and not in the form of an address by the President.

Note: Article 70 enables the President to address either chamber of Parliament when he considers necessary; but article 71(1) makes it obligatory on the President to address the Houses of Parliament at the commencement of each session and inform Parliament of the programme to be followed by Government during the session.

Article 71 was inserted by the Drafting Committee to follow the practice prevailing in the Parliament of the United Kingdom regarding the King's speech on the opening of a new session of Parliament and the debate thereon. This practice, if adopted, would give the members of parliament an opportunity to give expression to their views on the policy of the Government at the commencement of the session and such discussion is likely to be of great help to the Ministry in pursuing their policy relating to the administration of the affairs of the Union.

ARTICLE 72

B. Pattabhi Sitaramayya and others*: That in article 72, the words "any committee of Parliament of which he may be named a member" be deleted.

Note: The article, as it stands in the Draft Constitution, follows section 21 of the Government of India Act, 1935. This amendment seeks to omit

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the words "any committee of Parliament of which he may be named a member" from the article. If these words are omitted, then a Minister who is not a member of a particular House of Parliament or the Attorney-General for India cannot be named as a member of a select committee on a Bill of that House, although it might be necessary to include them as members of the committee for the proper consideration of the Bill. This amendment cannot therefore be accepted.

ARTICLE 73

B. Pattabhi Sitaramayya and others* : That in clause (2) of article 73, for the word "choose" wherever it occurs, the word "elect" be substituted.

Note : This is a purely verbal amendment. The word "choose" has been used also in articles 76, 157 and 160 ; it is the word used in the corresponding sections of the Government of India Act, 1935 (sections 22 and 65). Whether the Anglo-Saxon "choose" or the Latin "elect" is to be used is a matter of taste.

ARTICLE 74

Upendranath Barman : That the following be added at the end of the proviso to article 74 :

and the resolution is signed by at least one-sixth of the total membership of the House.

Note : This amendment involves a question of policy. The amendment, if accepted, would make the procedure for the removal of the Deputy Chairman of the Council of States very rigid. If, however, this amendment is accepted, then it should be redrafted as follows :

In the proviso to article 74, after the word "notice" the words "signed by not less than one-sixth of the total membership of the Council" be inserted.

ARTICLE 75

B. Pattabhi Sitaramayya and others* : That in clause (2) of article 75, for the words "the Deputy Chairman or" the following be substituted :

the Deputy Chairman, the person appointed in the place of Deputy Chairman under clause (1) of this article or,

Note : The power of the President to appoint a member to perform the duties of the office of Chairman under clause (1) of article 75 is limited to the case where both the offices of Chairman and Deputy Chairman are vacant or where the Vice-President who is the Chairman is acting as President and the office of Deputy Chairman is vacant. No such appointment can be made for the performance of the duties of the Chairman or Deputy

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Chairman during any temporary absence of the Chairman or the Deputy Chairman referred to in clause (2) of article 75. The proposed amendment cannot, therefore, be accepted.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have made the following suggestions :

Since the Speaker and the Chairman are elected officers, the casual vacancies should in our opinion be also filled up by the Houses themselves. The wishes of the legislators in these matters, if possible, should always be the safer guide. So, it is suggested that the word "Council" should be substituted for the word "President" in clause (1) of article 75. Similarly, in articles 159(1) and 162(1), for the word "Governor" the words "Assembly" and "Council" respectively should be substituted.

Note : Clause (1) of article 75 is intended to provide particularly for the case when after the first constitution of the Council it will be necessary for some person to preside over the first meeting of the Council for the purposes of the election of its Chairman. The person appointed by the President under clause (1) of article 75 may discharge the functions of the Chairman only until a Chairman has been elected by the House.

The above remarks will also apply to the amendments proposed in articles 159(1) and 162(1) for the substitution for the word "Governor" the words "Assembly" and "Council" respectively.

ARTICLE 77

Upendranath Barman : That the following be added at the end of the first proviso to article 77 :

and the resolution is signed by at least one-sixth of the total membership of the House.

Note : The remarks under article 74 will also apply to this amendment. If this amendment is accepted it should be redrafted as follows :

In the first proviso to article 77, after the word "notice" the words "signed by not less than one-sixth of the total membership of the House" be inserted.

ARTICLE 78

B. Pattabhi Sitaramayya and others* : That in clause (2) of article 78, for the words "the Deputy Speaker or", the following be substituted :

the Deputy Speaker, the person appointed in the place of Deputy Speaker under clause (1) of this article or,

Note : This amendment cannot be accepted for the same reason for which their amendment to article 75 cannot be accepted.

The Deputy Speaker of the West Bengal Legislative Assembly has

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

suggested that after clause (1) of article 78 the following clause should be inserted :

(1-a) When the Speaker is unable to discharge his functions owing to absence, illness or any other cause, the Deputy Speaker shall discharge the duties of the office of the Speaker until the date on which the Speaker resumes his duties.

He says that under the provisions of article 78 and article 159 of the Draft Constitution the Deputy Speaker is only required to preside over a meeting of the Assembly "during the absence of the Speaker from any sitting" and that there is also a provision for the Deputy Speaker to assume all the powers and duties of the Speaker while the office of the Speaker is vacant. When the Deputy Speaker acts as a Speaker during the absence of the Speaker from any sitting of the Assembly, his functions as "Speaker" end as soon as he leaves the chair in the House though he may be required to act as Speaker from day to day for several days continuously on account of the continued absence of the Speaker from the sittings of the Assembly. As such he is debarred from functioning as Speaker in dealing with cases that may come up before the House for his decision when he is not occupying 'the chair in the sitting of the Assembly. In Bengal there was a case in which a plane was chartered for obtaining the signature of the Speaker on a Bill passed by the House to be sent to the Governor for his assent when the Speaker was staying somewhere in a mofussil town. As the Deputy Speaker had no power to deal with such cases when he was acting as Speaker during the absence of the Speaker from any sitting of the Assembly, he could not sign the Bill. The Deputy Speaker of the West Bengal Assembly accordingly considers that a provision similar to that made in article 54(2) should be included in articles 78 and 159 to enable the Deputy Speaker to discharge the duties of the office of the Speaker when the Speaker is unable to discharge his functions owing to absence, illness or any other cause. The proposed amendment has been suggested by him for this purpose. The Deputy Speaker has also suggested that similar provisions may also be made in articles 75 and 162.

Note : Necessary provision conferring power on the Deputy Speaker to discharge the functions of the Speaker during his absence on account of illness or otherwise may be included in the Rules of Procedure of the House to avoid any difficulty of the type referred to by the Deputy Speaker of the West Bengal Legislative Assembly. Thus, if the Rules of Procedure of the Assembly provide that in the absence of the Speaker, the Deputy Speaker may sign Bills for their presentation for assent or for their transmission to the Upper House, difficulties of the type mentioned by the Deputy Speaker might be avoided. Article 78 or article 159 will not prevent any such rule being made by the House. Where however a duty is imposed on the Speaker himself by the provisions of the Constitution, the Deputy Speaker will not be entitled to perform such duty except in the contingencies

provided for in article 78 or article 159. Thus the certificate of the Speaker referred to in clause (4) of article 90 or in clause (4) of article 174 will have to be signed by the Speaker and not by the Deputy Speaker. The number of such provisions in the Constitution where the Speaker has been specifically mentioned is small. There is therefore hardly any necessity to make any change in the existing provisions.

ARTICLE 81

B. Pattabhi Sitaramayya and others*: That in article 81, for the words "President or some person appointed in that behalf by him," the words "the Presiding Officer" be substituted.

Note: This amendment seeks to substitute the words "the Presiding Officer" for the words "President or some person appointed in that behalf by him" in article 81, but the person presiding at the first meeting of the House cannot take his seat in the House and preside unless he has made and subscribed the declaration referred to in article 81. It is, therefore, necessary that he should first make the declaration either before the President or some person appointed by him in that behalf and then other members may make the declaration before him. (Under the present Constitution such person in a Provincial Legislature makes the declaration before the Governor and he is appointed by the Governor to be the person before whom other members are to make the declaration.) This amendment cannot, therefore, be accepted.

Drafting Committee: That in article 81, for the words "a declaration", the words "an affirmation or oath" be substituted.

Note: [See also articles 103(6), 165 and 195 and the Third Schedule.]

In articles 49, 62(4), 136 and 144(2), the expression "affirmation" or "oath" has been used, whereas in articles 81, 103(6), 165 and 195 the expression "declaration" has been used. This difference in nomenclature is hardly intentional and it would be better to use the same expression in all the articles for the sake of uniformity.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 82

B. Pattabhi Sitaramayya and others*: That in clause (1) of article 82, after the words "Houses of Parliament" the words "or a House of Parliament and a House of the Legislature of a State" be inserted, and for the word "both" the word "two" be substituted.

Note: The prohibition with regard to dual membership of Parliament and of the Legislature of a State is contained in clause (2) of article 166.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

The Drafting Committee has, however, recommended that clause (2) of article 166 should be omitted and a new clause should be inserted after clause (1) of article 82 prohibiting dual membership both of Parliament and of the Legislature of any State whether it is a State in Part I or Part III of the First Schedule. The proposed amendment is, therefore, hardly necessary.

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in clause (1) of article 82, for the words "member of both Houses of Parliament" the words "member simultaneously of any two legislative bodies in the Union" be substituted.

Note : Prohibition of dual membership of both Houses of Parliament is contained in clause (1) of article 82. Prohibition of dual membership of Parliament and of the Legislature of a State has been provided in a new clause (1a) which has separately been proposed for insertion after clause (1) on the recommendation of the Drafting Committee. Prohibition of dual membership of two Houses of the Legislature of a State is contained in clause (1) of article 166. If it is decided to prohibit dual membership of the Legislatures of two States, then the appropriate place for the insertion of such a provision is article 166. Necessary provision for the purpose has been suggested in the notes under article 166. This amendment is not therefore necessary.

B. Pattabhi Sitaramayya and others* : That in clause (3) of article 82, before the word "period" the word "continuous" be inserted.

Note : The insertion of the word "continuous" before the word "period" in clause (3) of article 82 would not be correct in view of the proviso to that clause.

If a member is absent for thirty days, then present for one day, and again absent for thirty days, there would not be a period of absence of sixty days, but two separate periods of thirty days each ; the idea of continuity is implied in the phrase "*a period of sixty days*".

L. N. Sahu : That the following be inserted as a new clause in article 82 :
That a member of either House of the Union Parliament shall vacate his seat if three-fourths of the voters of his constituency send a petition in writing to the President of the Union calling for the resignation of the member representing the constituency.

Note : This amendment provides for what is known as the right of recall. Such a right is provided for in some of the State Constitutions of the U.S.A. and also in article 142 of the Constitution of the U.S.S.R. There is a good deal of literature on the subject ; the weight of authority at present appears to be against such a right. However, the question is one of policy. The wording of the amendment will need revision, even if it is adopted : *e.g.*, who are "the voters of the constituency" in the case of a member of the Council of States representing one of the Indian States ? Under article 67(3)

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he is elected by the elected members of the Lower House of the State Legislature. Are "the voters of the constituency" all the voters of the State or only the members of the Lower House of the State Legislature? This will have to be made clear.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in clause (3) of article 82 after the word "sixty" and before the word "days" the word "consecutive" should be added.

Note: The insertion of the word "consecutive" after the word "sixty" and before the word "days" in clause (3) of article 82 would not be correct in view of the proviso to that clause.

Drafting Committee: That after clause (1) of article 82, the following be inserted :

(1-a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person is chosen a member both of Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

Note: The Drafting Committee was of the view that dual membership both of Parliament and of the Legislature of any State, whether it is a State in Part I or Part III of the First Schedule, should be prohibited. Hence the proposed amendment.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 83

B. Pattabhi Sitaramayya and others*: That in clause (1) (d) of article 83 after the words "if he is" the words "not a citizen of India or" be inserted.

R. R. Diwakar and S. V. Krishnamoorthy Rao: That in clause (1) (d) of article 83 for the words "or adherence to a foreign power" the words "or adherence to a power other than the Indian Union" be substituted.

Note: These two amendments may be dealt with together. In the light of these amendments and of certain criticisms received from other quarters, it has already been proposed to amend sub-clause (d) of clause (1) of article 83 (*See Drafting Committee's amendment infra*).

Thakurdas Bhargava and Govind Das: That to clause (1) of article 83, the following new sub-clauses be added :

(f) if he does not belong to the community for which the seat in the particular constituency is reserved ;

(g) if he belongs to any of the communities for which the seat has been reserved and the constituency is a general one.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

Thakurdas Bhargava and Govind Das : That to article 83 the following new clause be added :

(3) In case of constituencies whose seats are reserved under article 292, the members for them shall be chosen only from the communities for which the seats are reserved and in case of general constituencies the members shall be chosen from communities other than those for whom seats have been reserved.

Note : The provisions sought to be included by these amendments are contrary to the decision of the Constituent Assembly that the members of a minority community with reserved seats shall have the right to contest unreserved seats as well. This particular decision has not been embodied in the Draft Constitution, because it relates to details of election, all of which have been left to auxiliary legislation under articles 290 and 291.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in sub-clause (a) of clause (1) of article 83, the words "other than an office declared by Parliament by law not to disqualify its holder" and sub-clause (e) of that clause should be deleted, and that similar changes should also be made in clause (1) of article 167.

Note : If the words "other than an office declared by Parliament by law not to disqualify its holder" be omitted from sub-clause (a) of clause (1) of article 83, then no member of the legislature can be appointed as Parliamentary Secretary or Minister (not of the Cabinet rank) to help the members of the Council of Ministers in the discharge of their duties. It will not also enable any member of the legislature to take up during the time of emergency military duties. As it is not possible to define clearly the offices which it may be necessary to exclude from the operation of sub-clause (a) of clause (1) of article 83, it has been left to the Legislature to declare by law such offices. Sub-clause (e) of clause (1) of article 83 refers to the disqualifications by reason of corrupt or illegal practices, conviction in courts and failure to lodge a return of election expenses within the time and in the manner required, as were provided in section 26 of the Government of India Act, 1935, as originally enacted. The Drafting Committee has not thought it necessary to incorporate in the Constitution the details of such disqualifications lest they would unnecessarily burden the Constitution and these have accordingly been left to be provided by auxiliary legislation. For similar provisions in other Constitutions, see article 16(1) of the Irish Constitution. The above remarks will also apply *mutatis mutandis* to the changes recommended in article 167(1).

B. Pattabhi Sitaramayya and others* : That in paragraph (a) of clause (2) of article 83 the words "Governor and members of Parliament or State Legislatures" be added.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

Note: Governors cannot be mentioned in sub-clause (a) of clause (2) of article 83 in view of article 135 of the Draft Constitution. If a Governor intends to be a candidate for election to either House of Parliament he should first resign from the office of the Governor and then offer himself as a candidate for election. It is not necessary to include any reference to members of Parliament or of the Legislatures of States in the said sub-clause, as such members do not hold any office of profit either under the Government of India or the Government of any State.

Drafting Committee: That for sub-clause (d) of clause (1) of article 83, the following be substituted :

(d) If he has ceased to be a citizen of India or has voluntarily acquired the citizenship of a foreign power.

Note: In the light of criticisms received from certain quarters, it is considered desirable to redraft sub-clause (d) of clause (1) of article 83 as proposed in the amendment.

The reason for this change is this :

If, for example, Pakistan frames her definition of citizenship in such a way as to include any person born in Pakistan territory irrespective of any other considerations, then, a person so born who has migrated from Pakistan to India and has become a citizen of India under the Indian Constitution will nevertheless be a citizen of Pakistan under Pakistan law, although he may not have *voluntarily* acquired Pakistan citizenship. Under sub-clause (d) as it stands at present, such a person would be disqualified, which would be manifestly unfair, because the disqualification is imposed upon him for no fault of his own. It will be remembered that under article 68-A citizenship of India is a necessary qualification for membership of Parliament.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

NEW ARTICLES 83-A AND 83-B

Thakurdas Bhargava and Govind Das: That after article 83 the following new articles be inserted :

83-A. *Disqualifications for reserved constituencies:* Persons belonging to any community other than the one for whom the particular seats are reserved are disqualified from standing from such constituency.

83-B. *Disqualifications for general constituencies:* Persons belonging to communities for whom seats have been reserved under articles 292 and 294 are disqualified from standing from general seats.

Note: The remarks on the amendment of Thakurdas Bhargava and Govind Das to article 83 will also apply to this amendment. Where a seat has been reserved for a particular community, the obvious meaning is that no member of any other community is eligible for election to that seat; it is therefore unnecessary to say so again.

ARTICLE 85

Atul Chandra Gupta (Advocate, Calcutta High Court) has taken exception to the reference in clause (3) of article 85 to the privileges enjoyed by the members of the House of Commons. He would rather refer to the law and practice of the old Indian Central Legislature.

Note: It is not clear why Gupta prefers a subordinate legislature to a sovereign legislature. However, if the suggestion to omit the reference is to be accepted, then the following amendment will be necessary in article 85 :

In clause (3) of article 85, for the words "as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution" the words "as were enjoyed by the members of the Legislature of the Dominion of India immediately before the commencement of this Constitution" be substituted.

ARTICLE 86

B. Pattabhi Sitaramayya and others* : That in article 86, for the words "Legislature of the Dominion of India" the words "Constituent Assembly" be substituted.

Note: Since the Constituent Assembly is also the Dominion Legislature, it makes no practical difference which term is used. But as allowances are provided for the members of this body, under section 29 of the Government of India Act, 1935, as adapted under the Indian Independence Act, in their capacity as members of the Dominion Legislature, it is better to use this latter term.

ARTICLE 87

B. Pattabhi Sitaramayya and others* : That for clause (4) of article 87, the following be substituted :

(4) A Bill originating in the Council of States and pending therein or passed by that House shall not lapse so far as that House is concerned on the dissolution of the House of the People.

Note: In England, the effect of a dissolution of Parliament—and even a prorogation—on pending Bills is that they lapse altogether. Article 87 of the Draft Constitution relaxes this rule so far as India is concerned : clause (3) saves Bills pending at the time of prorogation and clause (5) saves certain Bills pending at the time of dissolution. To go further and attempt to provide that certain other Bills shall only lapse as regards one House but not as regards the other seems to be an unnecessary refinement. Take a Bill which having originated in and being passed by the House of

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

the People is transmitted to the Council of States and is pending there at the time of dissolution. Under the Draft Constitution, as it stands at present, such a Bill lapses altogether as the result of the dissolution; but under the Draft Constitution as proposed to be amended, the Bill lapses only so far as the House of the People is concerned. What exactly does this mean? Obviously, if the passing of the Bill by the House of the People is washed out as the result of the dissolution, the foundation of the proceedings in the Council of States disappears and therefore those proceedings cannot survive. For these reasons the amendment cannot be accepted.

Incidentally, it may be pointed out that a Bill which has been passed by both Houses and is pending the President's assent at the time of dissolution does not lapse by virtue of anything contained in the Constitution.

B. Pattabhi Sitaramayya and others*: That in clause (5) of article 87, the words "so far as that House is concerned" be inserted at the end.

Note: This amendment cannot also be accepted for reasons given above.

ARTICLE 88

B. Pattabhi Sitaramayya and others*: In clause (1)(c) of article 88, what does "reception" mean? Does it mean "introduction"?

Note: According to the usual procedure a Bill after it is passed by the House is transmitted to the other House with a message from the originating House. The word "reception" used in sub-clause (c) of clause (1) of article 88 means the receipt of the Bill together with the message sent by the other House after it is passed by that House. It does not mean introduction, as it is not necessary to re-introduce the Bill in the House to which it is transmitted. The Bill after it is received from the other House is laid on the table of the House to which it is transmitted and then any member may move that the Bill be taken into consideration.

B. Pattabhi Sitaramayya and others*: That in clause (2) of article 88, after the word "or" in the last line, the following be inserted:

the House which received the Bill

Note: Sub-clause (c) of clause (1) of article 88 refers to a Bill which having been passed by one House and transmitted to the other House has not been passed by the other House within a period of six months from the date of the reception of the Bill by it. Clause (2) of article 88 should, therefore, refer only to the prorogation or adjournment of the House to which the Bill is so transmitted and the reference to "both Houses" in that clause does not appear to be correct. This amendment may, therefore, be accepted but it should be re-drafted as follows:

In clause (2) of article 88, for the words "both Houses are" the words "the House referred to in sub-clause (c) of that clause is" be substituted.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to redraft clause (2) of article 88 on the following lines :

In reckoning any such period of six months as is referred to in clause (1) of this article no account shall be taken of any time during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

B. Pattabhi Sitaramayya and others* : That in clause (4) of article 88, the words "total number of", and the proviso be deleted.

Note : The words "total number of" in clause (4) of article 88 should be retained, otherwise the said clause might be construed as requiring a majority of members of each House (and not the total number of members of both Houses) present and voting, which is clearly not the intention.

The proviso to clause (4) of article 88 limits the amendments which can be moved to a Bill during its consideration at a joint sitting of the two Houses. If this proviso is omitted, then the proceedings at the joint sitting may be unnecessarily delayed as there would be no restrictions on the amendments which can be moved to the Bill at the joint sitting.

B. Pattabhi Sitarmayya and others* : That clause (5) of article 88 be deleted.

Note : This amendment seeks to omit clause (5) of article 88. Clause (5) of article 88 is based on section 31(5) of the Government of India Act, 1935 (as originally enacted), and provides that where the President has notified his intention to summon the Houses to meet in a joint sitting prior to the dissolution of the Assembly, the Bill in respect of which the notification has been issued shall not lapse on the dissolution of the Assembly and the joint sitting may be held notwithstanding the dissolution. The joint sitting will in this case be of the Council of States and the new House of the People; it is possible that the sponsors of the amendment have been under the impression that the joint sitting is with the dissolved House. There is, however, no objection to the amendment; but, if it is accepted and clause (5) omitted, then the following consequential amendment will be necessary in clause (5) of article 87 :

In clause (5) of article 87, the words "subject to the provisions of article 88 of this Constitution" be omitted.

ARTICLE 89

B. Pattabhi Sitaramayya and others* : That in article 89, for the words "thirty days", wherever they occur, the words "twenty-one days" be substituted.

Note : Under the Parliament Act, 1911, a "Money Bill" which has been

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passed by the House of Commons and sent up to the House of Lords but is not passed by the House of Lords without amendment within one month after it is so sent up, is, unless the House of Commons directs to the contrary, to be presented to His Majesty and becomes an Act of Parliament on the Royal assent being signified to it. Under article 21(2) of the Irish Constitution the "Money Bill" is required to be returned by the Upper House to the Lower House within 21 days. The period of thirty days prescribed in article 89 is based on the period of one month prescribed under the Parliament Act, 1911.

ARTICLE 90

A. B. Rudra (Principal, Jaipuria College, Calcutta) has suggested that in clause (1) of article 90, sub-clauses (c) and (d) should be omitted. He asks what exactly these sub-clauses mean here. He says that in England both the revenues and the expenditure of money are authorized by Acts of Parliament, but here, as in the past, articles 93 and 94 provide that the expenditure will not require the passing of an Act of Parliament. He accordingly thinks that there is absolutely no sense in including these two sub-clauses.

Note: These two items have been included by the Drafting Committee to cover all possible cases and there is no harm in retaining them.

ARTICLE 91

Tajamul Husain: That the following new clause be added to article 91:

(2) If the Houses do not accept the recommendations of the President, the Bill shall again be presented to the President, and the President shall declare either that he assents to the Bill, or that he does not assent to the Bill. If the President does not assent to the Bill, the House of the People shall automatically dissolve itself, and a fresh election shall be held immediately. If the party that was in power at the time of the dissolution is again returned in a majority, the President shall vacate office and the Bill become an Act of Parliament.

Note: This amendment seems to be based on a misapprehension that in declaring that he assents to a Bill or that he withholds assent therefrom the President will act in his discretion. Under article 91 the power of the President to declare that he assents to the Bill or that he withholds assent therefrom will be exercised by him on the advice of his Ministers. Accordingly, there will be hardly any occasion for any conflict of the President with his Ministers in such matters. The power under the proviso to article 91 will be also exercised by the President on the advice of his Ministers. The necessity to exercise such power is likely to arise in cases in which any mistake has been detected in the Bill after it has been passed by the Houses

and presented to the President for assent or when any special circumstance arises for modifying any provisions of a Bill after it has been passed by the Houses and presented to the President. The question of dissolution of the House of the People and the holding of elections to reconstitute the House or the vacating of the office by the President will not thus arise in any such case.

If the Bill returned by the President with amendments recommended by him is afterwards passed again by both Houses without such amendments, it shall be presented to the President again under article 91 for assent and it is not necessary to make any specific provision for the purpose. The Ministers who are responsible to the House of the People will no doubt in such case advise the President to declare that he assents to the Bill. There is however no objection to include in the proviso to article 91 a provision similar to the one contained in the proviso to article 175 that if after a Bill has been returned by the President for reconsideration, the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom. Necessary amendment for the purpose has been suggested separately.

Jaya Prakash Narayan : The following should be added at the end of article 91 :

and if the Bill is passed again by Parliament with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

With regard to the enactment of a law the will of Parliament must ultimately prevail.

Note : This amendment may be accepted. An amendment for the purpose has already been suggested separately.

Drafting Committee : (i) That in the proviso to article 91, for the words "not later than six weeks" the words "as soon as possible" be substituted.

(ii) That to the proviso to article 91, the following be added at the end :

and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

Note : In the proviso to article 91, a time-limit of six weeks has been fixed for the President to return a Bill for reconsideration by the Houses of Parliament. Parliament may not be in session during that period, nor may it be possible to summon Parliament for a long time afterwards. The best course would, therefore, be to leave it to the President to return the Bill as soon as possible without fixing any time-limit, so that Parliament, if not in session, may consider the Bill immediately upon re-assembling.

Some critics have expressed the view that there should be a provision similar to that contained in the proviso to article 175 that if after a Bill has been returned by the President to the Houses of Parliament for reconsideration, the Bill is passed again by the Houses with or without

amendment and presented to the President for assent, the President shall not withhold assent therefrom. There does not appear to be any objection to the inclusion of such a provision in article 91 to bring it into line with article 175.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendments proposed by it.

ARTICLE 92

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided that for the word "emoluments" in sub-clause (b) of clause (3) of article 92 the word "salaries" be substituted.

ARTICLE 98

Tajamul Husain : That in clause (4) of article 98, after the words "two Houses" the words "the Chairman of the Council of States, or in his absence" be inserted.

Note : This amendment seeks to give the Chairman of the Council of States precedence over the Speaker of the House of the People in presiding at a joint sitting of the two Houses of Parliament.

The Drafting Committee was however of opinion that the Speaker of the House of the People should preside at a joint sitting of the two Houses of Parliament as the House of the People is the more numerous body. Provision may be made in the Rules of Procedure that in the absence of the Speaker of the House of the People, the Chairman of the Council of States shall preside at such joint sitting.

ARTICLE 99

Sachchidananda Sinha : That in article 99, for the word "Hindi" wherever it occurs, the words "Hindustani (Hindi or Urdu)" be substituted.

Note : This amendment involves questions of policy.

Govind Das : That in clause (1) of article 99, for the words "or English" the following words be substituted :

in Devanagari character or in English for such time as Parliament may determine.

Note : This amendment involves a question of policy. If however this amendment is accepted, then it should be redrafted as follows :

In clause (1) of article 99, for the words "or English" the words "in the Devanagari character or, for such period as Parliament may determine, in English" be substituted.

The following consequential amendments will be also necessary :

(1) In the proviso to clause (1) of article 99, for the words "in either

language" the words "in Hindi or, during the period so determined, in English" be substituted.

(2) In clause (2) of article 99, for the words "or English" the words "in the Devanagari character or, during the period so determined, in English" be substituted.

Govind Das and Thakurdas Bhargava : That in clause (1) of article 99, for the words "or English" the following be substituted :

in Devanagari character or in English for a maximum period of five years.

Note : This amendment involves a question of policy. If this amendment is accepted, it should be redrafted as follows :

In clause (1) of article 99, for the words "or English" the words "in the Devanagari character or during the period of five years after the commencement of this Constitution or such shorter period as Parliament may determine, in English" be substituted.

The following consequential amendments will also be necessary :

(1) In the proviso to clause (1) of article 99, for the words "in either language" the words "in Hindi, or, during the period so referred to, in English," be substituted.

(2) In clause (2) of article 99, for the words "or English" the words "in the Devanagari character or during the period referred to in clause (1) of this article, in English" be substituted.

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in the proviso to clause (1) of article 99, for the words "his mother tongue" the words "any other language used by any State for its business" be substituted.

Note : The amendment involves questions of policy.

T. A. Ramalingam Chettiar : (i) That in clause (2) of article 99 for the words "whenever he thinks fit" the words "during the first five years after the passing of the Constitution" be substituted. (ii) That in clause (2) of article 99 the words "Hindi or" be deleted. (iii) That in clause (2) of article 99 for the word "may" where it occurs for the first time the word "shall" be substituted.

Note : The above amendments involve questions of policy.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided that after the words 'Speaker of the House of the People' in the proviso to clause (1) of article 99 the words 'or person acting as such' be inserted. The same change was made in clause (2) also.

THE STATE LEGISLATURE

ARTICLE 148

L. N. Sahu : That in sub-clause (a) of clause (1) of article 148 after the words "States of" the word "Orissa" be inserted.

Note: In accordance with the recommendation of the Provincial Constitution Committee, which was adopted by the Constituent Assembly, it was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province. The proposed amendment by Sahu will therefore have to await this decision by the Orissa members of the Constituent Assembly.

Jaya Prakash Narayan : Legislatures of the States should be unicameral and all provisions with regard to the Legislative Council should be dropped.

Note: Under the existing Constitution, Madras, Bombay, the United Provinces and Bihar have two chambers and the rest have one chamber each. It has been decided that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province. The provisions regarding the Legislative Council (Upper House) have accordingly been included in the Draft Constitution.

ARTICLE 149

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (3) of article 149, the following second proviso be inserted :

Provided further that the ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India.

Note: This amendment may be accepted in the following revised form :
After clause (3) of article 149 the following clause be inserted :

(3-a) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India :

Provided that nothing in this clause shall apply to constituencies having seats reserved for the purposes of article 294 of this Constitution.

Drafting Committee : That in clause (1) of article 149, for the words "chosen by direct election" the words "chosen either directly by the voters themselves or by persons elected for the purpose by the voters" be substituted.

Note: For the reasons given in the note under article 67, this amendment would be necessary in article 149 also.

Under this amendment the actual decision whether the elections are to be direct or indirect will be left to the Legislatures of the States under article 291.

Drafting Committee : (i) That clause (2) of article 149 be omitted.

(ii) That for the proviso to clause (3) of article 149, the following be substituted :

Provided that where the total population of a State as ascertained at the last preceding census exceeds thirty millions, the number of members in the Legislative Assembly of the State shall be on a scale of not more than one member for every lakh of the population of the State up to a population of thirty millions and not more than five members for every complete one million of the population of the State in excess of thirty millions :

Provided further that the total number of members in the Legislative Assembly of a State shall in no case be more than four hundred and fifty or less than sixty.

Note : The Special Committee was of opinion that the provisions relating to adult franchise contained in this article should be made applicable to all elections to the Lower Houses of all the States including the States in Part III of the First Schedule.

Govind Ballabh Pant invited the attention of the Special Committee to the proviso to clause (3) of article 149 which laid down that the total number of members in the Legislative Assembly of a State could not be more than three hundred, although it had been provided in that clause that the representation of each territorial constituency in the Legislative Assembly of a State would be on a scale of not more than one representative for every one lakh of the population. He pointed out that in view of the limit so imposed by the proviso the United Provinces with a population of sixty millions could not have more than three hundred members in the Legislative Assembly and that this would be quite unjust and unfair; for a House of only three hundred members would be unrepresentative in character and composition and would fail to reflect faithfully the movements of public opinion in the Province and it would be also physically impossible for any member to keep in personal touch with his voters on account of their large number. The Special Committee accordingly suggested that clause (3) of article 149 should be revised so as to provide that where the total population of a State exceeds thirty millions there would be five additional representatives for every complete one million of the population above thirty millions and that the total number of members of the Assembly shall not in any case be more than four hundred and fifty.

The above amendments have accordingly been suggested to give effect to the suggestions of the Special Committee.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendments in the form proposed by it.

Drafting Committee : That in clause (3) of article 149, after the words "save in the case of the autonomous districts of Assam" the words "and in the case of constituencies having seats reserved for the purposes of article 294 of this Constitution" be inserted.

Note: The reasons given in the notes under article 67 apply equally to elections to the House of the People and the Legislative Assemblies of the States, and hence this proposed amendment.

[The Drafting Committee and the Special Committee have accepted the amendment.]

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 150

The Madras Legislative Council has suggested that for clause (2) of article 150 the following clause should be substituted :

(2) The members in the local Council of State shall be elected by the people directly from the territorial constituencies based and constituted on property, trade, educational and taxation qualifications superadded to adult suffrage.

Note: This amendment seeks to make a departure from the decision already taken by the Constituent Assembly as to the composition of the Legislative Councils of the States having such Councils and therefore involves a question of policy.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in clause (2) of article 150 :

(a) in sub-clause (b) for the word "one-third" the word "one-half" should be substituted ;

(b) sub-clause (c) should be deleted.

Note: Clause (2) of article 150 follows the recommendation of the Provincial Constitution Committee as adopted by the Constituent Assembly in July, 1947. The amendment proposed seeks to make a departure from the decision already taken by the Constituent Assembly. The provision for nomination has been retained in the upper chamber to enable the representation of special interests which would not be adequately represented in the elected element of the Provincial Legislature.

The Editor of the Indian Law Review and some members of the Calcutta Bar have suggested that clause (3) of article 150 should be redrafted as follows :

(3) Before the first general election and thereafter before each triennial election under clause (2) of article 151 of the Constitution to the Legislative Council of a State, five panels of candidates shall be formed, of which one shall contain the names of representatives of the graduates of universities in the State and the remaining four shall respectively contain the names of elected representatives of the local authorities of the State being persons having special knowledge or practical experience in respect of the following subjects namely :

(a) literature, art, medicine and science ;

- (b) agriculture, fisheries and allied subjects ;
- (c) commerce, engineering and architecture ;
- (d) public administration, law, journalism and social services.

Note : The amendments proposed in clause (3) of article 150 seek firstly to define the electorates in the case of representation of universities and also in the case of representation of the functional interests and secondly to make certain additions to sub-clauses (a) to (d) of clause (3) of that article.

The electorates have not been specified in clause (2) of article 150 but they have been left to be prescribed by law of the Legislature of the State.

As regards the additions sought to be made in sub-clauses (a) to (d), it may be pointed out that the said sub-clauses are based on the corresponding provision in article 18(7)(1)^o of the Irish Constitution and follow the recommendations of the Provincial Constitution Committee as adopted by the Constituent Assembly in July, 1947. The references to "medicine", "law" and "journalism" do not occur in the list of interests specified in that article of the Irish Constitution. The reference to 'commerce' has not been included as the Drafting Committee was of opinion that no special representation for commerce was necessary in view of the fact that 'commerce' would certainly be adequately represented in the elected element of the Provincial Legislature. The Special Committee also considered this point and agreed to this opinion of the Drafting Committee. For the same reasons it is also hardly necessary to provide for any special representation for "medicine", "law" or "journalism".

The Indian Merchants' Chamber in its representation to the President of the Constituent Assembly, as mentioned in the comments of the Chamber under article 67, has complained that no special representation for commerce and industry has been provided for in the Legislatures of the States which correspond to Governors' Provinces. The grounds advanced by the Chamber for such representation are the same as those specified in its comments under article 67.

Election to the Provincial Legislative Assemblies will be based on adult franchise and there will be no room for special representation therein. Special representation has only been provided for in the Legislative Councils. Where the Province has no Legislative Council, representatives of commerce and industry will have to come into the Legislature through the general electorate. This will be the case in most of the Provinces and the Drafting Committee saw no reason why it should not be so everywhere.

If, however, it is decided to provide for special representation of commerce and industry in the Legislative Councils, then for sub-clause (c) of clause (3) of article 150 it will be necessary to substitute the following :

- (c) industry, commerce, engineering and architecture.

The Drafting Committee was of the view that no special provision for representation of commerce and industry in the Legislative Councils of the States need be included in this article.

The Special Committee agreed with the recommendation of the Drafting Committee.

ARTICLE 151

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided that for the word "third" in clause (2) of article 151 the word "second" be substituted.

ARTICLE 152

Drafting Committee : That for article 152, the following be substituted :

152. *Qualifications for membership of the State Legislature :* A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India ;

(b) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty-five years of age ; and

(c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by the Legislature of the State.

Note : For the reasons given in remarks under the new article 68-A proposed for insertion after article 68, this amendment is suggested in article 152.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 153

Drafting Committee : That clause (3) of article 153 be omitted.

Note : The notes under articles 143 and 144 may be seen.

To give effect to the suggestion of the Special Committee that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution, this amendment would be necessary in article 153.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (1) of article 153, for the words "six months shall not intervene" the words "not more than six months shall intervene" be substituted.

Note : The notes under article 69 apply to this amendment also.

Jaya Prakash Narayan : Clause (3) of article 153 should be dropped.

There is no reason why the Legislature of the State can be summoned and dissolved by the Governor in his discretion, when such discretionary power is not conferred on the President with regard to the summoning and dissolution of the Federal Parliament.

Note : In view of the change suggested by the Special Committee in the mode of selection of Governors, namely that the Governors should be nominated by the President instead of being elected by the Province, the Special Committee was of the view that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution. If this view is adopted, then clause (3) of article 153 will have to be omitted.

ARTICLE 155

R. K. Sidhva : That the following new clause be added to article 155 :

(3) The address of the Governor shall be subject to the vote of confidence or no confidence in the Ministry if the Legislature so desires.

Note : The Legislature has the right to pass a motion of no confidence in the Ministers at any time. It is not therefore necessary expressly to provide that after the Governor has addressed the Assembly the Legislature shall have the right to pass such a motion. This amendment is therefore not necessary.

Jaya Prakash Narayan : Article 155 should be dropped.

Note : The reasons already given for the retention of the corresponding provision with regard to the Union Parliament in article 71 will also apply to this amendment.

ARTICLE 156

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in article 156, the words "and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member" be deleted.

Note : If this amendment is accepted, then a Minister, who is not a member of a House of the Legislature of a State having two Houses or the Advocate-General for the State, cannot be named as a member of a select committee on a Bill of that House, although it may be necessary to include them as members of the committee for the proper consideration of the Bill. This amendment cannot therefore be accepted.

ARTICLE 158

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (b) of article 158, for the words

"Deputy Speaker" where they occur for the first time, the words "the Governor" be substituted.

Note : The Speaker of the Legislative Assembly of a State is not appointed by the Governor of the State but is elected by the members of the Assembly. It has accordingly been provided in clause (b) of article 158 that the Speaker may resign by writing under his hand addressed to the Deputy Speaker so that the Deputy Speaker may intimate the resignation to the Assembly. In the House of Commons of the Parliament of the United Kingdom if a vacancy in the Chair is caused by the Speaker's acceptance of office, protracted illness or death, the Clerk announces the death of the Speaker, or at the ensuing meeting of the House reads a letter which the Speaker stating the cause of his retirement has addressed to the Clerk (May's *Parliamentary Practice*—Fourteenth Edition, page 269). The procedure prescribed in clause (b) of article 158 that the Speaker may resign his office by writing under his hand addressed to the Deputy Speaker may therefore be retained. Compare also the provisions of clause (b) of article 77.

ARTICLE 161

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (b) of article 161, for the words "Deputy Chairman" where they occur for the first time, the words "the Governor" be substituted.

Note : The notes under article 158 will also apply to this amendment. This amendment should not therefore be accepted.

ARTICLE 165

Drafting Committee : That in article 165 for the words "a declaration" the words "an affirmation or oath" be substituted.

Note : See notes under article 81.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in article 165, for the words "the Governor or some person appointed in this behalf by him" the words "the presiding officer" be substituted.

Note : The person presiding at the first meeting of the Legislative Assembly or the Legislative Council of a State cannot take his seat in the Assembly or the Council, as the case may be, and preside unless he has made and subscribed the declaration referred to in article 165. It is, therefore, necessary that he should first make the declaration either before the Governor or before some person appointed by him in that behalf and

then other members may make the declaration before him. Under the existing Constitution such person makes the declaration before the Governor and he is appointed by the Governor to be the person before whom other members are to make the declaration. This amendment cannot, therefore, be accepted.

ARTICLE 166

L. N. Sahu : That in article 166, the following new clause be inserted :

A member of either House of the State Legislature shall vacate his seat if three-fourths of the members of his constituency send a petition in writing to the Governor of the State concerned calling for the resignation of the member representing the constituency.

Note : The notes under article 82 apply to this amendment also.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (4) of article 166, before the word "period" the word "continuous" be inserted.

Note : The notes under article 82 apply to this amendment also.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (2) of article 166, after the words "the Legislature of a State" in line 2, the words "or of the Legislatures of two States" be inserted.

Note : Membership of Legislatures of more than one State would hardly occur in practice. Under the usual electoral rules—which are likely to be the same under the new Constitution—no person would be qualified for being chosen as a member unless he is entitled to vote in some constituency in the State and no person would be included in the electoral roll of a constituency for being so entitled to vote unless he is resident in the constituency for not less than 180 days in the year. Unless, therefore, an artificial meaning is given to "residence", it would not be possible for a candidate to be qualified for election from more than one State. This amendment is therefore hardly necessary. If, however, it is accepted, then it should be redrafted as follows :

After clause (1) of article 166, the following be inserted :

(1-a) No person shall be a member of the Legislatures of two or more States and if a person is chosen a member of the Legislatures of two or more States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all the States shall become vacant unless he has previously resigned his seat in the Legislatures of all but one of the States.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the redraft.

Drafting Committee : That clause (2) of article 166 be omitted.

Note : See note under article 82.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 167

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in clause (1) of article 167,

- (a) in sub-clause (a), the words "other than an office declared by the Legislature of the State by law not to disqualify its holder;" be deleted;
- (b) sub-clause (e) be deleted.

Note: The notes on amendments proposed by the sponsors of these amendments in clause (1) of article 83 will also apply to these amendments.

Drafting Committee: That for sub-clause (d) of clause (1) of article 167, the following be substituted :

- (d) if he has ceased to be a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign power;

Note: For the reasons given in the notes under article 83 this amendment is suggested in article 167 also.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment, but replacing the word "power" by the word "State".

ARTICLE 169

Atul Chandra Gupta (Advocate, Calcutta High Court) has taken exception to the reference in clause (3) of article 169 to the privileges enjoyed by the members of the House of Commons.

Note: If it is decided to omit the reference, then the following amendment will be necessary in article 169:

- In clause (3) of article 169, for the words "as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution" the words "as were enjoyed by the members of the Legislature of the Dominion of India immediately before the commencement of this Constitution" be substituted.

ARTICLE 173

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrinati G. Durgabai: That in clause (2) of article 173, for the word "thirty" the word "twenty-one" be substituted.

Note: Under the Parliament Act, 1911, a "Money Bill" which has been passed by the House of Commons and sent up to the House of Lords but is not passed by the House of Lords without amendment within one month

after it is so sent up, is, unless the House of Commons directs to the contrary, to be presented to His Majesty and becomes an Act of Parliament on the Royal assent being signified to it. Under article 21(2) of the Irish Constitution the "Money Bill" is required to be returned by the Upper House to the Lower House within 21 days. The period of thirty days prescribed in article 173 is based on the period of one month prescribed under the Parliament Act, 1911.

ARTICLE 175

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in article 175, for the words "declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President", the words "assent to the Bill" be substituted.

Note : Under article 175, the power of the Governor to declare that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President will be exercised by him on the advice of his Ministers. Accordingly, there will be hardly any occasion to withhold assent from a Bill which has been passed by the Legislature. There is therefore no harm in retaining the provision with regard to the withholding of assent from a Bill in this article. There may be cases where it might be necessary for the Governor to exercise the power of withholding assent even on the advice of the Ministers. If after a Bill is passed by the Legislature, the Ministers resign before the Bill is assented to by the Governor, the new Ministry which would be formed might not want the Bill to be enacted and might advise the Governor to withhold assent from the Bill. But if the provision relating to the withholding of assent is omitted from this article, it will not be possible for the Governor to withhold it. There is thus a distinct advantage in retaining the provision relating to the withholding of assent in this article.

The provision regarding reservation of a Bill for the consideration of the President is also necessary in view of the provision contained in clause (2) of article 231.

Further, the Drafting Committee has recommended that a provision for reservation by the Governor of Bills affecting the powers of High Courts for the consideration of the President on the lines of paragraph XVII(b) of the Instrument of Instructions to the Governor under the Government of India Act, 1935, should be included in the Draft. The Special Committee has also agreed to this recommendation. It is therefore essential that provision regarding reservation of Bills for the consideration of the President should be retained in article 175. The proposed amendment cannot therefore be accepted.

Tajamul Husain : That in the proviso to article 175, the words "Provided that where there is only one House of the Legislature and the Bill has been

passed by that House" be deleted.

Note : The proviso to article 175 is intended to apply only to the case where the Legislature of a State is unicameral, to follow the recommendation made by the Provincial Constitution Committee which was subsequently adopted by the Constituent Assembly in July 1947.

Tajamul Husain : That in the proviso to article 175, after the words "return the Bill" the words "to the Legislative Assembly of the State" be inserted.

Note : This amendment is not sufficiently clear. If the intention is that the proviso to article 175 should apply only to the case where a State has only one House of the Legislature, that is the Legislative Assembly, then this amendment is not necessary, and the existing proviso as it is worded will meet the object of the sponsor of the amendment.

If, however, the intention is that the proviso should apply both to the case where the Legislature of a State is unicameral and to the case where it is bicameral, then the following amendments would be necessary :

In the proviso to article 175, for the words "the House", in the three places where they occur, the words "the House or Houses" be substituted.

Tajamul Husain : That at the end of the proviso to article 175 the following words be added :

But if the Governor does not assent to the Bill, the Legislative Assembly of the State shall automatically dissolve itself, and a fresh election shall be held immediately. If the party that was in power at the time of the dissolution is again returned in a majority, the Governor shall vacate his office and this Bill shall become an Act of the Legislature.

Note : The Special Committee was of opinion that in view of the change suggested by the committee in the mode of selection of Governors, namely, that the Governors should be nominated directly by the President instead of being elected by the Provinces, all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution. Accordingly if the words "in his discretion" be omitted from the proviso to article 175, the power of the Governor to return the Bill to the Legislature under the proviso will be exercised by him on the advice of his Ministers, and the remarks under article 91 *ante* will apply to this amendment.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that in article 175 the words "or a Bill passed under article 173(4)" be added after the words "has been passed by both Houses of the Legislature of the State" and before the words "shall be presented to the Governor".

Note : This amendment is not necessary in view of the amendment proposed by the Drafting Committee to article 173. It has been proposed to insert the words "by both Houses in the form in which it was passed" after the words "deemed to have been passed" in clause (4) of article 173.

Jaya Prakash Narayan : The following words should be omitted from article 175 : (i) "or that he reserves the Bill for the consideration of the

President”; (ii) “where there is only one House of the Legislature and the Bill has been passed by that House”.

Note : The provision regarding reservation of a Bill for the consideration of the President is necessary in view of the provision contained in clause (2) of article 231. Further, the Drafting Committee has recommended that a provision for reservation by the Governor of Bills affecting the powers of High Courts for the consideration of the President on the lines of paragraph XVII(b) of the Instrument of Instructions to the Governor under the Government of India Act, 1935, should be included in the Draft. The Special Committee has also agreed to this recommendation. It is therefore essential that provision regarding reservation of Bills for the consideration of the President should be retained in article 175. The words “or that he reserves the Bill for the consideration of the President” cannot therefore be omitted from article 175.

So long as the provisions with regard to two chambers in the Legislature of a State are retained, the words “where there is only one House of the Legislature and the Bill has been passed by that House” cannot be omitted from article 175. Further, the provisions of the proviso to article 175 containing the said words follow the decision of the Constituent Assembly as set out in para 24 of the report of the Provincial Constitution Committee, as adopted by the Constituent Assembly in July, 1947.

Drafting Committee : (i) That before the existing proviso to article 175, the following new proviso be inserted :

Provided that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill.

(ii) That in the existing proviso to article 175, for the words “Provided that where there is only one House of the Legislature, and the Bill has been passed by that House, the Governor may, in his discretion” the words “Provided further that where there is only one House of the Legislature and the Bill has been passed by that House, the Governor may” be substituted.

Note : The judges of almost all the High Courts have stressed the importance of preserving the independence of the judiciary. Some of the High Courts have suggested that all legislation affecting any High Court should be undertaken by the Union Parliament. The Drafting Committee considered the views of the judges and came to the conclusion that a provision for reservation by the Governor of Bills affecting the powers of the High Court for the consideration of the President on the lines of paragraph XVII(b) of the Instrument of Instructions to the Governors under the Government of India Act, 1935, should be included in the Draft. The Special Committee agreed with the Drafting Committee.

To give effect to the above suggestion and also to the earlier suggestion of the Special Committee that all references to the exercise of functions by

the Governor in his discretion should be omitted from the Draft Constitution, the proposed amendments would be necessary.

Views of the Federal Court and of the Chief Justices of the Provincial High Courts : The same principle of independence of the judiciary and its freedom from the control of the executive in the administration of justice requires not merely that the appointment of judges should be free from party or political interference, but also that the jurisdiction of the High Courts, the right to fix the salary, pension, leave and allowances of the judges should be taken out of the purview of the legislative power of the States and should be made Central subjects. The obvious desirability of maintaining uniformity in the position, status and the privileges of the judges of the High Courts in the States also reinforces our recommendation. If, however, it could not for any reason be accepted, legislation in respect of the above matters should be reserved for the President's approval. In this connection, we should like to invite attention to para XVII(b) of the Instrument of Instructions issued to the Governors on March 8, 1937, wherein it was provided that the consent of the Governor-General should be required in respect of "any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by the Act designed to fill". The alternative suggestion we have made above will ensure the continuance of this wholesome safeguard.

Note : The Drafting Committee has already considered this point and has recommended that a provision for reservation by the Governor of Bills affecting the powers of the High Court for the consideration of the President on the lines of paragraph XVII(b) of the Instrument of Instructions to the Governors under the Government of India Act, 1935, should be included in the Constitution and an amendment of article 175 has been suggested for the purpose. The Special Committee has also agreed to this amendment. It may be noted that the powers of the State Legislatures with regard to the constitution and organisation of High Courts have been severely restricted by various provisions contained in the Constitution. Judges are to be appointed by the President; they are removable by the President only on addresses by both Houses of Parliament—so that both appointment and removal have been taken out of the hands of the State authorities and vested in the Centre. Minimum salaries have also been fixed and there is the further provision that neither the salary of a judge nor his rights in respect of leave or pension shall be varied to his disadvantage after his appointment. Then there is the provision that every High Court shall have unqualified superintendence over all courts throughout its territorial jurisdiction. Security of tenure, security of remuneration, security of revisional jurisdiction (in the form of superintendence) have all been assured by the Constitution itself. The fixing of the actual salaries has been left to the State concerned because they have to be paid out of the revenues of the State.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to omit the words "in his discretion" in the proviso to article 175.

ARTICLE 176

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That article 176 be deleted.

Note : This amendment cannot be accepted as the provision relating to the reservation of Bills for the consideration of the President cannot be omitted for the reasons given in the notes on amendment under article 175.

Jaya Prakash Narayan : Article 176 should be dropped.

Note : This amendment cannot be accepted as the provision relating to the reservation of Bills for the consideration of the President cannot be omitted for the reasons given above.

Tajamul Husain : That in the proviso to article 176, for the words "House, or as the case may be, the Houses of the Legislature" the words "Legislative Assembly" be substituted.

Note : The words "House, or as the case may be, the Houses of the Legislature" have been used in the proviso to article 176 to meet the case where the Legislature of the State is bicameral. It is not clear if the intention of the sponsor of this amendment is to restrict the application of the proviso to the case where the Legislature of the State is unicameral. But it is hardly desirable to fetter in this way the powers of the President who will act on the advice of his Ministers.

Tajamul Husain : That in the proviso to article 176, the words "or Houses" be deleted and for the words "for his consideration" the words "and the Bill shall automatically become an Act of the Legislature" be substituted.

Note : For the reasons explained in the remarks on the immediately preceding amendment it is not desirable to omit the words "or Houses" from the proviso to article 176.

If the second part of this amendment is accepted, then the power of the President to assent to a Bill reserved for his consideration which will be exercised by him on the advice of his Ministers will be severely restricted.

The Bills which will be reserved for the consideration of the President would be mainly those which will attract the operation of article 231 of the Constitution, *i.e.*, the Bills with respect to any of the matters enumerated in the Concurrent List containing any provision repugnant to the provisions of an earlier law made by Parliament or any existing law with respect to the matter. Obviously, the President should be given free scope to exercise his powers of assent under article 176 which will be exercised by him on the advice of his Ministers. If however such powers are restricted in the manner proposed, then the reservation of such Bills for the consideration of the President will practically have no significance.

ARTICLE 183

R. K. Sidhva : That in clause (1) of article 183, the word "shall" be substituted for the word "may" and the following be added at the end :

within six months from the date of the first session of the Assembly.

Note : This amendment seeks to make it obligatory on each House of the Legislature to make rules of procedure within six months from the date of the first session. This will make the provision unduly rigid, for there may be various reasons for which rules cannot be finally made within that period. This amendment should not therefore be accepted.

ARTICLE 184

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (1) of article 184, for the words "the language or languages generally used in that State", the words "such language or languages as may be decided upon by the Legislature of the State" be substituted.

Note : This amendment involves questions of policy. If, however, this amendment is accepted, it should be redrafted as follows :

(1) In clause (1) of article 184, for the words "the language or languages generally used in that State" the words "such language or languages as may be determined by the Legislature" be substituted.

(2) In clause (2) of article 184, for the words "in any language generally used in the State" the words "in the language or any of the languages so determined" be substituted.

T. A. Ramalingam Chettiar : That in clause (1) of article 184, for the words "generally used in that State or in Hindi or in English" the words "specified by the Legislature" be substituted.

Note : This amendment also involves questions of policy. If, however, this amendment is accepted, it should be redrafted as follows :

In clause (1) of article 184, for the words "the language or languages generally used in that State or in Hindi or in English" the words "such language or languages as may be determined by the Legislature" be substituted.

G. S. Gupta : (i) That in clause (1) of article 184, for the words "generally used in that State", the words "as may be fixed by the Legislature of the State", and for the words "or English" the words "or, for a period of five years from the commencement of this Constitution, in English" be substituted. (ii) That in clause (2) of article 184, for the words "in any language generally used in the State or in English" the following be substituted :

in the language or any of the languages so fixed or, for a period of five years from the commencement of this Constitution, in English

Note : These amendments involve questions of policy.

If, however, they are accepted, they should be redrafted as follows :

(i) In clause (1) of article 184, for the words "the language or languages generally used in that State" the words "such language or languages as may be determined by the Legislature" be substituted.

The following consequential amendment will also be necessary :

In clause (2) of article 184, for the words "in any language generally used in the State" the words "in the language or any of the languages so determined" be substituted.

(ii) In clause (1) of article 184 for the words "or in English", the following words be substituted :

or, during the period of five years after the commencement of this Constitution, in English

The following consequential amendment will also be necessary :

In clause (2) of article 184, for the words "or in English" the words "or, during the period referred to in clause (1) of this article, in English" be substituted.

Sachchidananda Sinha : That in clause (1) of article 184, for the word "Hindi" the words "Hindustani (Hindi or Urdu)" be substituted.

Note : This amendment also involves questions of policy.

Govind Das : That in clause (1) of article 184, for the words "or in English" the following be substituted :

in Devanagari character or in English for such time as the Legislature of the State may determine

Note : The remarks above would also apply to this amendment. If, however, this amendment is accepted, then it should be redrafted as follows :

In clause (1) of article 184, for the words "or in English" the words "in the Devanagari character or, for such period as the Legislature of the State may determine, in English" be substituted.

The following consequential amendment will also be necessary :

In clause (2) of article 184, for the words "or in English" the words "or, during the period so determined, in English" be substituted.

Thakurdas Bhargava and Govind Das : That in clause (1) of article 184, for the words "or in English", the following be substituted :

in Devanagari character or in English for a maximum period of five years

Note : The remarks above would also apply to this amendment. If, however, this amendment is accepted, it should be redrafted as follows :

In clause (1) of article 184, for the words "or in English" the following be substituted :

in the Devanagari character or, during the period of five years after the commencement of this Constitution or such shorter period as the Legislature of the State may determine, in English

The following consequential amendment will also be necessary :

In clause (2) of article 184, for the words "or in English" the words "or during the period referred to in clause (1) of this article, in English" be substituted.

T. A. Ramalingam Chettiar : That in clause (2) of article 184, for the words "in any language generally used in the State or in English" the words "in a language specified by the Legislature under the preceding clause" be substituted.

Note : This amendment also involves questions of policy.

If, however, this amendment is accepted, it should be redrafted as follows:

In clause (2) of article 184, for the words "in any language generally used in the State or in English" the words "in the language or any of the languages so determined" be substituted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided that after the words "Chairman of the Legislative Council" in clause (2) of article 184 the words "or person acting as such" be inserted.

ARTICLE 186

Begum Sultan Mir Amir-ud Din (Member of the Madras Legislative Assembly) has proposed that after article 186 a new article should be added to prohibit the introduction of legislation which bars the jurisdiction of civil courts to adjudicate upon rights of private parties as amongst themselves or as between private parties and the Government of a State or the Union.

Note : Such a provision, if included, would cause great administrative inconvenience. In election matters provision has to be made barring the jurisdiction of courts at various stages. All decisions made by the revising authority after the draft publication of an electoral roll have to be made final, for, if the parties are allowed to take the matter to civil courts, then all further proceedings in respect of the election would be liable to be stayed and the election would be postponed indefinitely, which is not possible. Further, no election to a Legislature can be called in question except by an election petition which is to be inquired into by an election tribunal and orders passed on the recommendation of the tribunal have to be made final, for, if the parties are allowed to go to the civil court and the civil court orders stay of further proceedings with respect to the election, then elections cannot be finalized and the Legislatures cannot be properly constituted. It might also be necessary to make the decisions of revenue authorities in disputes between private parties and the Government in revenue matters final, for if such matters are taken to court and the Government has to wait until the final decision of the civil court, the revenues of the Union or of the State, as the case may be, are liable to be affected seriously. However, any such provision barring jurisdiction of civil courts will have to be made by legislation passed through the Legislature and it can be assumed that the Legislature will always be vigilant to see that the rights of the parties are sufficiently protected.

SECOND SCHEDULE

Drafting Committee: That in paragraph 8, in Part III of the Second Schedule, for the words "respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State" the words "to the Deputy President of the Indian Legislative Assembly" be substituted.

Note: The reference to salaries and allowances of the Deputy President of the Council of State in paragraph 8 in Part III of the Second Schedule is not correct as there was no Deputy President of the Council of State. Hence the proposed amendment which has been accepted by the Drafting Committee.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

NEW SCHEDULE III-B

Drafting Committee: That after the new Schedule III-A, the following Schedule be inserted:

Schedule III-B

[Article 67(1-a)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or States specified in the first column of the table of seats appended to this Schedule there shall be allotted the number of seats specified in the third column of the said table opposite to that State or States, as the case may be.

TABLE OF SEATS

THE COUNCIL OF STATES

Representatives of States for the time being specified in Parts I and II of the First Schedule

1	2	3
States	Population	Total Seats
Madras	49,341,810	25
Bombay	20,849,840	13
West Bengal	21,211,427	13
United Provinces	55,020,617	25

1	2	3
East Punjab	12,617,175	9
Bihar	36,340,151	21
Central Provinces & Berar	16,813,584	11
Assam	7,471,531	6
Orissa	8,728,544	7
Delhi	9,917,939	1
Ajmer-Merwara including Panth Pip- loda, Coorg	791,454	1
TOTAL .	230,104,072	132

Representatives of States for the time being specified in Part III of the First Schedule

1	2	3
States	Population	Total Seats
TOTAL SEATS .		

Representatives of Groups of States for the time being specified in Part III of the First Schedule

1	2	3
States	Population	Total Seats
TOTAL SEATS .		

Note : The Drafting Committee recommended that the allocation of seats in the Council of States among the States should be indicated in a schedule to the Constitution and that the said schedule in so far as the representation of States in Part III was concerned should be left blank and filled in at a later stage before the Constitution was finally passed when the position of the Indian States resulting from the various 'mergers' now taking place had become clearer.

It is accordingly suggested that after the new Schedule III-A, new Schedule III-B be inserted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to redraft Schedule III-B as follows:

Schedule III-B
[Article 67(1-a)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or States specified in the first column of the table of seats appended to this Schedule there shall be allotted the number of seats specified in the third column of the said table opposite to that State or States, as the case may be.

TABLE OF SEATS

THE COUNCIL OF STATES

Representatives of States for the time being specified in Parts I and II of the First Schedule

1	2	3
States	Population	Total Seats
Madras		
Bombay		
West Bengal		
United Provinces		
East Punjab		
Bihar		
Central Provinces & Berar		
Assam		
Orissa		
Delhi		
Ajmer-Merwara including Panth Piploda, Coorg		
TOTAL		

*Representatives of States for the time being specified in Part III of
the First Schedule*

1	2	3
States	Population	Total Seats
TOTAL SEATS		

Representatives of Groups of States for the time being specified in Part III of the First Schedule

1	2	3
Group of States	Population	Total Seats

TOTAL SEATS .

8. *Legislative Powers of the President and the Governor*

LEGISLATIVE POWERS OF THE PRESIDENT

ARTICLE 102

B. Pattabhi Sitaramayya and others*: That in clause (2)(a) of article 102, for the words "both Houses" the words "the House of the People" be substituted.

Note: It is not clear why it is proposed to substitute the words "the House of the People" for the words "both Houses" in sub-clause (a) of clause (2) of article 102. Under the latter part of the sub-clause, resolutions disapproving the Ordinance are required to be passed by both Houses and the proposed amendment does not seek to alter this part. It is therefore necessary that the Ordinance should be laid before both Houses of Parliament.

Jaya Prakash Narayan: That the following articles should be substituted for article 102:

102. A Statutory Committee of 24 persons shall be elected annually on the principle of proportional representation through single transferable vote by the Federal Legislature. A member of the Government shall not be a member of the Statutory Committee, but shall have power to attend its meetings and take part in its deliberations.

102-A. The Statutory Committee shall have the power—

- (a) to scrutinize and sanction Ordinances framed by the Government under the authority of a law passed by the Legislature;
- (b) to consider and pass, on the recommendation of the Government, emergency laws in the form of Ordinances on all matters of immediate urgency in the intervals between sessions of the Legislature;
- (c) to discharge such other functions as may be assigned to it by the Legislature.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

102-B. The Statutory Committee shall be accountable to the Legislature for its activities. Emergency laws shall be laid before the Legislature concerned and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature unless earlier disapproved by the Legislature, or withdrawn by the Government.

Enactment of laws through executive Ordinances is undemocratic. The suggestion is based on the Czechoslovakian Constitution of 1920.

Note: By this amendment three new articles have been proposed for substitution for article 102 of the Draft Constitution. These new articles seek to confer power to make emergency laws in the form of Ordinances during the intervals between the sessions of the Legislature on a Statutory Committee consisting of 24 persons to be elected by the Federal Legislature.

The existing article 102 seeks to confer power on the President to promulgate Ordinances during recess of Parliament. The President may promulgate such Ordinances only on the advice of the Ministers. Accordingly, Ordinances promulgated under article 102 are really Ordinances made by the Council of Ministers who are responsible to the Houses of Parliament, and it is hardly necessary to constitute a Committee of 24 persons for the purpose of promulgation of such emergency laws. Such a committee is to continue in office for a period of one year whereas the Ministers as soon as they cease to command the confidence of the Legislature will have to vacate their office. Parliament will thus have greater control on emergency legislation promulgated by the Ministers than by a committee of 24 persons elected by it for a fixed period of one year. Further, it may not be possible to have Ordinances promulgated in cases of grave emergency with utmost expedition if the power to promulgate such Ordinances be entrusted to a committee of 24 persons. The proposed provision will therefore be hardly an improvement.

Clause (a) of the new article 102-A seeks to give power to the proposed Committee to scrutinize and sanction Ordinances framed by the Government under the authority of a law passed by the Legislature. Presumably, by Ordinances under this clause, rules, bye-laws and other subsidiary legislations have been meant. If every such subsidiary legislation is required to be submitted to the proposed Committee for sanction before it is issued, then it would be very inconvenient from the administrative point of view.

It is not clear what other functions are proposed to be assigned to the Committee under clause (c) of the new article 102-A.

In the new article 102-B it is proposed that the Statutory Committee shall be accountable to the Legislature for its activities. It is not clear what action the Legislature may take against the Committee if they do not approve of any measure taken by the Committee.

Ordinances made by the President on the advice of the Ministers under the existing article 102 will cease to operate at the expiration of six weeks from the re-assembly of Parliament, or if, before the expiration of that

period, resolutions disapproving them are passed by both Houses of Parliament, upon the passing of the second of those resolutions, and may be also withdrawn at any time by the President on the advice of the Ministers.

This amendment cannot therefore be accepted.

LEGISLATIVE POWERS OF THE GOVERNOR

ARTICLE 187

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (1) of article 187, the proviso be deleted. That in clause (3) of article 187, the proviso be deleted.

Note : The proviso to clause (1) of article 187 should not be omitted, for if the Governor promulgates an Ordinance containing any provision with respect to any matter enumerated in the Concurrent List which is repugnant to the provision of any law made by Parliament or an existing law with respect to that matter, this proviso read with the proviso to clause (3) of article 187 would save the repugnancy and would not render such provision void. The effect of the amendment would be to invalidate the provision, although it may be urgently needed. Provisos to clauses (1) and (3) of article 187 must therefore be retained.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (2) of article 187, the words "or where there is a Legislative Council in the State, before both the Houses" and the words "and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council" be deleted.

Note : This amendment is not necessary. It proceeds on the assumption that there may be an Ordinance which the Legislative Assembly disapproves but not the Legislative Council. If so, the Assembly will only have to repeat its resolution of disapproval and the Ministry, if it is to retain the confidence of the Assembly, will be compelled to ask the Governor to withdraw the Ordinance under article 187(2)(b). The procedure laid down in the Draft will not therefore prevent the Assembly from making its voice prevail, if after considering the verdict of the Legislative Council, it is still against the Ordinance.

Jaya Prakash Narayan : The following should be substituted for article 187:

187. A Statutory Committee of 24 persons shall be elected annually on the principle of proportional representation through single transferable vote by every Legislature of a State. A member of the Government shall not be a member of the Statutory Committee, but shall have power to attend its meetings and take part in its deliberations.

187-A. The Statutory Committee shall have the power—

(a) to scrutinize and sanction Ordinances framed by the Government

under the authority of a law passed by the Legislature ;

(b) to consider and pass, on the recommendation of the Government, emergency laws in the form of Ordinances on all matters of immediate urgency in the intervals between sessions of the Legislature ;

(c) to discharge such other functions as may be assigned to it by the Legislature.

187-B. The Statutory Committee shall be accountable to the Legislature for its activities. Emergency laws shall be laid before the Legislature concerned and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature unless earlier disapproved by the Legislature or withdrawn by the Government.

Note : The comments made above on the amendment by the sponsor of this amendment with regard to the corresponding provision about the legislative powers of the President in article 102 will also apply *mutatis mutandis* to this amendment. For reasons given in those comments, this amendment cannot be accepted.

9. Elections

ARTICLE 289

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in clause (1) of article 289, after the word "Parliament" where it occurs for the second time the words "or to the offices of President and Vice-President" be inserted.

Note : This amendment is not necessary as all doubts and disputes arising out of or in connection with the elections to the office of President or Vice-President must under clause (1) of article 58 be inquired into and decided by the Supreme Court.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (2) of article 289, the words "in his discretion" be added at the end.

Note : The Special Committee was of opinion that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution in view of the suggestion made by the committee that the Governors should be appointed by the President instead of being elected. If this suggestion of the Special Committee is accepted, then this amendment would not be necessary.

Tajamul Husain : That in clause (1) of article 289 after the words "all elections to Parliament" the words "and to the Legislature of a State for the time being specified in Part I of the First Schedule and of election to the office of Governor of the State" and after the words "with the elections to Parliament" the words "and to the Legislature of such State" be inserted respectively.

Note : These amendments seek to vest the President with power also to appoint the Election Commission to superintend, direct and control all elections to the Legislatures of States for the time being specified in Part I of the First Schedule. The Drafting Committee was of opinion that the Election Commission to superintend, direct and control elections to the Legislature of a State in Part I of the First Schedule should be appointed by the Governor of the State. Accordingly this amendment involves a question of policy.

Drafting Committee : That in clause (2) of article 289, the words "and of elections to the office of Governor of the State/elections to constitute a panel for the purpose of the appointment of a Governor of the State" be omitted.

That in clause (2) of article 289, for the words "elections to the Legislature of such State" the words "such elections" be substituted.

Note : The Special Committee was of opinion that the Governors should be directly appointed by the President and that it was not necessary to provide for a panel of candidates for such appointment. Hence the proposed amendments.

There is a strong feeling in some quarters that the necessity for maintaining the independence and integrity of the members of the Election Commission to be appointed under clause (1) or clause (2) of article 289 is the same as in the case of the judges of the Supreme Court and the State High Courts, the Auditor-General of India and the Auditors-in-Chief for the States, and accordingly provisions similar to those provided for in the case of such judges, the Auditor-General of India and the Auditors-in-Chief for the States should be made with regard to the removal, security of the tenure of office and safeguards against variation of the conditions of service of members of the Election Commission.

The following amendment is accordingly suggested :

To article 289 the following clauses be added :

(3) A member of an Election Commission appointed under this article can only be removed from office, in the case of a Commission appointed under clause (1), in like manner and on the like grounds as a judge of the Supreme Court, and in the case of a Commission appointed under clause (2), in like manner and on the like grounds as a judge of the High Court of the State, and the conditions of service of a member of any such Commission shall not be varied to his disadvantage after his appointment.

(4) The expenses of the Commission appointed under clause (1) or clause (2) of this article including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of India, or, as the case may be, the State.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the addition of proposed clauses (3) and (4).

NEW ARTICLES 289-A AND 289-B

Drafting Committee : That after article 289 the following new articles be inserted :

289-A. All elections to either House of Parliament or the Legislature of any State shall be on the basis of joint electorates.

289-B. The elections to the House of the People and to the Legislature of each State shall be based on adult suffrage ; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime, corrupt or illegal practice shall be entitled to be registered as a voter at the elections held—

(a) for the purpose of the members of that House or such Legislature being chosen directly by the voters themselves, or

(b) for the purpose of electing the persons by whom such members shall be chosen.

Explanation : In this article the expression “Legislature” means, where the Legislature is bicameral, the Lower House of the Legislature.

Note : The Draft, as it stands at present, does not contain any express provision to the effect that elections to Parliament and to the Legislatures of States shall be on the basis of joint electorates, because electoral details have been left under articles 290 and 291 to auxiliary legislation. But the provision regarding joint electorates is of such fundamental importance that it ought to be mentioned expressly in the Constitution itself.

The Drafting Committee accepted the amendment. The Special Committee was of opinion that the provisions relating to adult franchise should be made applicable to all elections to the Lower Houses of the Legislatures of all States including the States in Part III of the First Schedule and the provisions relating to joint electorates should be made applicable to all elections to the Legislatures of such States.

The amendment proposed above gives effect to the views of the Special Committee.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment with the omission of (a) and (b) in article 289-B.

10. *The Judiciary*

THE SUPREME COURT

ARTICLE 103

T. A. Ramalingam Chettiar : That in clause (2) of article 103, for the

words "Such of the judges" the words "Chief Judges" be substituted, and the words "as may be necessary for the purpose" be deleted.

Note: If this amendment is accepted, then in the case of appointment of the Chief Justice of the Supreme Court, consultation with the Chief Justice of the Supreme Court not being possible, the provisions of clause (2) of article 103 cannot be complied with. This clause as it stands now gives discretion to the President to consult such judges as he thinks necessary. The first proviso to this clause, however, makes it obligatory on the President to consult the Chief Justice of the Supreme Court in the case of appointment of any other judge of that court. Clause (2) of article 103 should therefore be retained in its present form.

B. Pattabhi Sitaramayya and others* : That in clause (2) of article 103, for the words "may be" the words "the President may deem" be substituted.

Note: This amendment may be accepted.

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in clause (3) of article 103, the word "and" be inserted at the end of sub-clause (b) after substituting a semi-colon for the full-stop and the following new sub-clause be added :

(c) has attained the age of 55.

Note: This amendment seeks to fix a minimum age limit of 55 years for appointment of judges of the Supreme Court. Such a limit, if fixed by the Constitution, might create practical difficulties as it would prevent the President from appointing a person of outstanding merit who was less than 55 years of age. It would be better to leave it to the President to decide about the experience and mature understanding of the intended candidate. If, however, this amendment is accepted, then it should be redrafted as follows :

In clause (3) of article 103, after the words "a citizen of India" the words "and has completed the age of 55 years" be inserted.

B. Pattabhi Sitaramayya and others* : That in Explanation I to clause (3) of article 103 after the words "or which" the words "after the 15th August, 1947 and" be inserted.

Note: If this amendment is accepted, then the period during which a person who is now a judge of the East Punjab High Court or is now an advocate of the East Punjab High Court was a judge of the Lahore High Court or practised as an advocate in the Lahore High Court before the 15th day of August, 1947, would not be included in calculating the periods referred to in sub-clauses (a) and (b) of clause (3) of article 103.

B. Pattabhi Sitaramayya and others* : That in clause (7) of article 103, after the word "authority" the words "or shall hold any office" be inserted.

Note: This amendment if accepted would prevent a retired judge of the Supreme Court from being appointed as the chairman of an inquiry commission or to other similar offices.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

Tajamul Husain : That in clause (2) of article 103, the words "such of" and "and of the High Courts in the States as may be necessary for the purpose" be deleted.

Note : The amendment seeks to make consultation with all the judges of the Supreme Court obligatory and to dispense with consultation with any of the judges of High Courts in the States.

It is hardly necessary to make consultation with all the judges of the Supreme Court obligatory. The intention is to leave as much discretion as possible to the President to make such consultation and at the same time to secure that appointments are not made without such consultation, and thus to minimize the chances of improper appointments, consultation with at least some of the judges of the Supreme Court and of the High Courts has been made obligatory. Consultation with judges of the High Courts in States especially with the Chief Justice of a High Court would certainly be useful before appointing a judge or an advocate of the High Court as judge of the Supreme Court.

Tajamul Husain : That in clause (4) of article 103, after the word "passed" the words "after a committee consisting of all the judges of the Supreme Court had investigated the charge and reported on it to the President and" be inserted.

Note : This amendment is hardly necessary in view of clause (5) of article 103 which gives power to Parliament to regulate by law the procedure for the investigation and proof of the misbehaviour or incapacity of a judge for which he is liable to removal. Further, it may not always be desirable to leave the investigation of a charge made against a judge to his brother judges.

The Chief Justice (Mr. Mallick) of the Allahabad High Court has suggested that all Chief Justices of High Courts should be *ex officio* judges of the Supreme Court and a provision to that effect should be included in the Constitution as there is a similar provision in the Judicature Act, 1873, under which the Chief Justices of the various Divisions are *ex officio* judges of the Court of Appeal in England.

Note : The Supreme Court is definitely a superior court. The analogy of the Judicature Act does not apply. It is therefore hardly desirable to make the Chief Justices of the various State High Courts *ex officio* judges of the Supreme Court for any purpose.

Views of the Federal Court and the Chief Justices of the Provincial High Courts : I. Article 103(1)* : There appears to be no reason why the minimum number of judges in the Supreme Court should be prescribed by the Constitution. The number may be left to be determined from time to time according to the volume of the work coming to the court.

*The Memorandum embodying the views of the Federal Court and the Chief Justices of the Provincial High Courts is reproduced in full at pp. 193-204.

Note : For the purpose of the proper constitution of the Supreme Court it has been considered necessary to prescribe in the Constitution itself a minimum number of judges for the Supreme Court to start with, power being provided to alter this number from time to time by law made by Parliament according to the volume of the work coming to the court. The amendment suggested by the Drafting Committee (*infra*) in clause (1) of article 103 may be seen in this connection.

II. Article 103(2) : The remarks under article 193(1) apply *mutatis mutandis* to the appointment of the judges of the Supreme Court, and article 103(2) may also be suitably modified*. In this connection it is not appreciated why a constitutional obligation should be cast on the President to consult any judge or judges of the Supreme Court or of the High Courts in the States before appointing a judge of the Supreme Court. There is nothing to prevent the President from consulting them whenever he deems it necessary to do so.

Note : The reason for making consultation with certain judges obligatory is obviously to secure that appointments are not made without such consultation and thus to minimize the chances of improper appointments.

III. Articles 103(3) and 193(2) : It seems desirable to insert a provision in these articles to the effect that no person should be appointed a judge of the Supreme Court or of a High Court who has at any time accepted the post of a Minister in the Union of India or in any State. This is intended to prevent a person who has accepted office of a Minister from exercising his influence in order to become a judge at any time. It is the unanimous view of the judges that a member of the Indian Civil Service should not be a permanent Chief Justice of any High Court. Suitable provision should be made in this article for this.

Note : It is unnecessary to put these prohibitions into the Constitution. The Attorney-General in England is invariably one of the Ministers of the Crown and often even a Cabinet Minister; he is often appointed a judge afterwards (The Lord Chancellor is, of course, both a Cabinet Minister and the head of the judiciary). In India, Sapru and Sircar were Law Members, or Law Ministers as they would be called in future; no one would suggest that men of this type should be ineligible for appointment as judges afterwards.

The Indian Civil Service, as it existed in the past, is now dead. The prejudice against its members was due to the fact that they were under the protection of an external authority—namely, the Secretary of State in England. That protection has ceased and there is no longer any ground for discriminating against them.

Merit should be the only criterion for these high appointments; no constitutional ban should stand in the way of merit being recognized.

*See Memorandum representing the views of the Federal Court and the Chief Justices representing all the Provincial High Courts of the Union of India (*infra*).

IV. Articles 103(2), 103(7), 193(1) and 196 : On a careful consideration, the judges have come to the unanimous conclusion that :

- (1) it is essential that a difference of three to five years should be maintained between the retiring age of High Court judges and that of Supreme Court judges ;
- (2) age-limit for retirement should be raised to sixty-five years for High Court judges and to sixty-eight years for Supreme Court judges ;
- (3) only if this is done and the scale of pension is raised so as to bear the same proportion to their salary as in England, but not otherwise, should total prohibition against practice after retirement be enforced ;
- (4) such prohibition should not be enforced against additional and temporary judges.

Note : The question of retirement of High Court judges and the ban on practice after such retirement have been considered by the Drafting Committee and the Special Committee and the conclusions arrived at have been set out separately in the notes under articles 193 and 196. The Drafting Committee did not consider any change to be made in the age of retirement of the judges of the Supreme Court and in the provision with regard to prohibition of practice by such judges after retirement.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in clause (2) of article 103 for the words "as may be necessary" the words "as the President considers necessary" should be substituted.

Note : There is no objection to this amendment. A similar amendment has been tabled by Pattabhi Sitaramayya and others for substitution of the words "the President may deem" for the words "may be" in clause (2) of article 103.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have pointed out that it is desirable that in a federal constitution there should be separation of the executive and the judiciary as far as practicable and that the possibility of judges being executive-minded should be guarded against as far as practicable and that this can only be assured if the recruitment is only from practising lawyers. They have accordingly suggested that in sub-clause (b) of clause (3) of article 103 after the word "years" the words "and is" should be substituted.

Note : If the object of this amendment is to ensure separation of the executive from the judiciary, amendments have been separately proposed for securing such separation in the Draft Constitution. After such separation there can hardly be any objection to the appointment of judges from persons serving as district judges. A certain proportion of such district judges will be recruited from the Bar and there is no reason to deny them opportunity of promotion to the Supreme Court if they are otherwise qualified. It will not therefore be desirable to restrict the recruitment of the Supreme Court Judges under sub-clause (b) of clause (3) of article 103

only to practising lawyers. This amendment can therefore hardly be accepted.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in clause (4) of article 103 the words "and voting" should be deleted, as they consider that in an important issue as the one contemplated in this clause, opportunity should be as much minimized as practicable for the legislators for remaining neutral.

Note: In the Constitutions of Canada, Australia, South Africa and Ireland, a bare majority of the members present and voting suffices for the presentation of the address for removal of a judge. Article 103(4) requires a two-thirds majority of those present and voting. It is hardly necessary to tighten it further by deleting the words "and voting".

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in clause (5) of article 103 before the word "investigation" the word "judicial" should be inserted in order to ensure that the machinery for investigation into the conduct of sitting judges is neither frivolously nor vexatiously invoked.

Note: The machinery for investigation into the conduct of sitting judges cannot be invoked until an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament. This is a sufficient safeguard against the invoking of the machinery for investigation either frivolously or vexatiously. Further, the procedure for such investigation has been left to be regulated by Parliament by law and there is no reason to doubt that Parliament will not provide for adequate machinery for proper investigation into the conduct of judges after such an address has been presented to the President.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that a proviso should be added to article 103(3)(a) as follows :

Provided that a judge of a High Court appointed from the Bar shall be eligible for appointment as a judge of the Supreme Court irrespective of the period for which he had been a judge of the High Court.

Note: This amendment is hardly necessary. A judge of a High Court appointed from the Bar may be appointed a judge of the Supreme Court if he satisfies the qualifications laid down either in sub-clause (a) or sub-clause (b) of clause (3) of article 103. This will be further clear from Explanation II to clause (3) under which any period during which a person held judicial office after he became an advocate shall be included in computing the period of ten years prescribed in sub-clause (b) of that clause.

A. B. Rudra (Principal, Jaipuria College, Calcutta) has suggested that in clause (3) of article 103, after sub-clause (b) the following sub-clause (c) should be inserted :

(c) or is a distinguished jurist.

He says that in order that there may be a wider field for choice and also because it is desirable to have one or two men of outstanding legal and

juristic learning which is not necessarily confined to judges and advocates. he has suggested the addition of this new provision which is based on a similar provision in the Statute of the International Court of Justice.

Note: This involves a question of policy. It would be hardly desirable to appoint as judge of the Supreme Court a person who is unacquainted with the practice and procedure of courts.

Drafting Committee : That in clause (1) of article 103, for the words "and such number of other judges not being less than seven, as Parliament may by law prescribe", the words "and, until Parliament by law prescribes a larger number, of seven other judges" be substituted.

Note: Clause (1) of article 103 provides that the Supreme Court shall consist of a Chief Justice of India and such number of other judges not being less than seven as Parliament may by law prescribe. Accordingly, until Parliament prescribes by law the number of judges, the Supreme Court cannot be duly constituted under this clause. But such a law cannot be passed until after the Constitution has come into operation and some time must therefore elapse between the commencement of the Constitution and the enactment of the law during which the Supreme Court cannot come into being. The amendment suggested is intended to avoid this interregnum.

Decision of the Drafting Committee, October, 1948 : The committee decided to sponsor the amendment. The committee also decided to suggest the following changes in clause (2):

(i) the words "after consultation with such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose" be deleted in clause (2); and

(ii) the first proviso to clause (2) be deleted.

(These changes are probably due to the proposal for the issue of an Instrument of Instructions to the President which *inter alia* would lay down the procedure for the appointment of judges.)

Drafting Committee : That in Explanation II to clause (3) after the words "judicial office" the words "not inferior to that of a district judge" be inserted.

Note: In article 103 the qualifications required for a judge of the Supreme Court are set out. According to Explanation II to clause (3) a munsif of ten years standing who was an advocate before being appointed a munsif, would be qualified. The Calcutta High Court judges have expressed the opinion that the term "judicial office" in this Explanation should be modified to read "judicial office not below the rank of district judge".

The proposed amendment, which has been agreed to both by the Drafting Committee and the Special Committee, gives effect to this suggestion.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

Drafting Committee : That in clause (4) of article 103, for the words "supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament" the words "by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President" be substituted.

Note : The Federal Court and the Chief Justices of the Provincial High Courts suggest that clause (4) of article 103 should run on the same lines as article 304 relating to the amendment of the Constitution, that is to say, the address should be supported by a majority of the total membership of both Houses of Parliament and by a majority of not less than two-thirds of the members present and voting.

Even as it stands, this article goes beyond the corresponding provision in the Constitutions of Canada, Australia, South Africa, and Ireland. In these Constitutions, a bare majority of each of the two Houses suffices for the presentation of the address for removal; the article in question requires a two-thirds majority of those present and voting. However, if this suggestion is accepted, then the proposed amendment would be necessary.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

Drafting Committee : That in clause (6) of article 103 for the words "a declaration" the words "an affirmation or oath" be substituted.

Note : See note against amendment proposed by the Drafting Committee to article 81.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 104

Tajamul Husain : That in the proviso to article 104, the words "to his disadvantage" be deleted.

Note : This amendment involves a question of policy. If this amendment is accepted, then the salary of a judge of the Supreme Court or his rights in respect of leave of absence or pension once fixed cannot be varied after his appointment. The object of the proviso is to provide a constitutional guarantee against the reduction of the salary of judges of the Supreme Court or the diminution of their rights in respect of leave of absence and pension during their term of office especially as a means to secure judicial independence. It would not be desirable to provide in the Constitution itself that the salary and other conditions of service of a judge shall remain unalterable throughout his term. Occasions may arise when owing to extraordinary economic conditions a general rise in salaries is

necessary. It would be unjust to treat the judges differently and to deny them the privileges afforded to the incumbents in other departments of the public service.

Views of the Federal Court and of the Chief Justices of the Provincial High Courts—Articles 104 and 197 and Part IV of the Second Schedule : The salary and allowances payable to the judges of the High Courts as well as their rights in respect of leave and pension should not be liable to be interfered with by the Legislatures of the States concerned, but should be made a Central subject and included in List I of the Seventh Schedule.

In article 197, relating to the salaries, etc., of the judges of the High Courts, a constitutional guarantee is provided against reduction of the salary below the amounts specified therein. It is suggested that similar provision should, for the same reasons, be included in article 104 relating to the salaries of the judges of the Supreme Court. It is also suggested that a proviso should be inserted in paragraph 10 of the Second Schedule to the effect that the salaries of judges who continue to hold office by virtue of the provisions of articles 308(1) and 310 shall continue to be governed by the same provisions which were applicable to them immediately before the commencement of the new Constitution. Para 12 of Part IV of the Second Schedule may also be suitably amended. The salaries of the permanent judges holding office immediately before the commencement of the Constitution should not be reduced at all. If, however, this suggestion is not accepted and the reduced salaries are not accepted by some of the judges (who may retire instead of continuing) they may claim:

- (a) a proportionate pension for the period of service rendered,
- (b) compensation, and
- (c) relief against the undertaking given by them when they accepted the office of judges.

This position will have to be more seriously considered in the case of European judges who have continued to serve depending on the assurances held out in the Indian Independence Act and conveyed by H. E. the Governor-General to the Governors of Provinces.

As regards the proposed reduction of the salaries (apart from the retrospective operation of the new scale), it is the unanimous view of the judges assembled at the Conference that the reduction proposed is not justified and the proposal to reduce the salaries should be dropped.

The pension of the judges is now fixed in sterling and is being paid according to the rate of exchange which has been fixed by the Secretary of State. It is suggested that the pension payable to the judges under the new Constitution should also be fixed in rupees by the Constitution itself.

As regards leave of absence, the judges of the Federal Court are entitled under the present rules to leave of absence for six months on medical certificate once only during the whole period of their tenure of office, and that too at a very small allowance. This was apparently considered

sufficient as the Federal Court under the existing Constitution did not have much work to do. Under the new Constitution, however, the Supreme Court will have many more cases coming to it and will in consequence have to work during the greater part of the year. The rights in respect of leave of absence and allowances during the period of such leave for judges of the Supreme Court should, therefore, be fixed on a more liberal scale. It is suggested that the rules in regard to these matters applicable to High Court judges should be made applicable to the judges of the Supreme Court also and paragraph 12(1) amended accordingly. As regards provisions for leave of absence and allowances and salary to be paid during that period as and when an Order-in-Council or a law is intended to be made, we trust that we shall be consulted. We should also like to point out that, as a result of the definition of "actual service" in paragraph 13(b)(ii) of Part IV of the Second Schedule, the salary which is declared in paragraph 10 to be payable to the judges of the Supreme Court and of the High Courts "in respect of the time spent on actual service" would not include any pay for the period of absence on leave. This, we presume, could not have been intended. This provision should be suitably amended so as to make it clear that the right of the judges to draw such allowances during periods of leave of absence as may be prescribed by any law or rules made in that behalf is not affected by anything contained in the Constitution.

Note: See note under article 175.

The constitutional safeguard against the reduction of salary of the Chief Justice and the judges of a High Court below the minimum has been prescribed in article 197 so as to prevent the Legislatures of the States from reducing the salaries below a reasonable figure. It is hardly necessary to put such a check on the power of Parliament to fix the salaries of the judges of the Supreme Court. The Special Committee agreed that the existing judges of the High Courts should continue to get the same salaries as they were drawing immediately before the commencement of the Constitution and necessary amendments have been suggested in paragraph 10 of Part IV of the Second Schedule. The Special Committee was, however, of opinion that the salaries of the judges of the Supreme Court should be fixed at the new scales suggested in Part IV of the Second Schedule and neither the Drafting Committee nor the Special Committee considered that any variation in the scale so fixed should be made in the case of the existing judges of the Federal Court who would become judges of the Supreme Court on the date of commencement of the Constitution under article 308(1).

As regards the rates of salaries of the judges of the Supreme Court and of the High Courts, a reference is invited to the notes under Part IV of the Second Schedule containing the recommendations of the Special Committee on this point.

The provisions contained in paragraph 12 of Part IV of the Second Schedule with regard to the rights of the judges in respect of leave of

absence and pension will apply only until detailed provisions with regard to such matters are made by Judiciary Acts as contemplated in articles 104 and 197. The provisions contained in paragraph 12 are thus only transitional provisions and are intended to maintain the *status quo* until Judiciary Acts containing the necessary provisions are enacted and it is expected that such Acts will be passed as soon as possible after the Constitution comes into operation. Presumably the judges would be consulted before Bills containing those provisions are introduced in the appropriate Legislatures.

Under the Government of India (Federal Court) Order, 1937 and the Government of India (High Court Judges) Order, 1937, the judges are entitled to leave allowances during leave in lieu of salary. All rights in respect of leave of absence having been continued, under paragraph 12 of Part IV of the Second Schedule, the right to receive leave allowances during absence on leave will not be affected by the definition of "actual service" which is intended to apply to paragraph 10 of that Part in which the expression "actual service" occurs. However, to make the intention clearer, the following amendments have been suggested separately to paragraph 12 :

In sub-paragraphs (1) and (2) of paragraph 12, for the words "leave of absence or pension" the words "leave of absence (including leave allowances) and pension" be substituted (*Vide* amendment proposed by the Drafting Committee to Part IV of the Second Schedule).

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to add the following new proviso to article 104 :

Provided that the salary of the Chief Justice of the Supreme Court shall not be less than five thousand rupees per month and the salary of any other judge of the Supreme Court shall not be less than four thousand rupees per month.

ARTICLE 106

Drafting Committee : That in clause (1) of article 106, after the words "judge of a High Court" the words "who is duly qualified for appointment as a judge of the Supreme Court" be inserted.

Note : The Federal Court and the Chief Justices of the Provincial High Courts have suggested that the words "duly qualified for appointment as a judge of the Supreme Court" may be inserted after the words "a judge of a High Court" in clause (1) of this article. They assume that it is the intention that the judge to be selected for serving in the Supreme Court should be qualified for appointment as a judge of the Supreme Court. Every judge of a High Court need not necessarily be so qualified, cf. articles 103(3)(a) and 193(2)(a). The qualifying words suggested above also occur in section 202(2) which is the corresponding provision in the present Constitution Act.

This suggestion may be accepted and the proposed amendment gives effect to it.

ARTICLE 107

R. K. Sidhva : That article 107 be deleted.

Note : The employment of retired judges follows the practice in the United Kingdom and in the United States of America as pointed out in the foot-note to article 107 of the Draft Constitution. This provision is an enabling provision. If the necessity for utilizing this provision does not arise, the Chief Justice will not utilize it.

Drafting Committee : That the words "subject to the provisions of this article" in article 107 be deleted.

Note : Justice Meredith of the Patna High Court considered the words "subject to the provisions of this article" redundant, as the meaning would be exactly the same even if they were omitted.

In view of the provision for appointment of *ad hoc* judges to the Supreme Court, the Hon'ble the Chief Justice and judges of the Calcutta High Court do not see the necessity for the provisions in article 107.

This article follows closely section 8 of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5-Ch. 49) which runs thus :

8. The Lord Chancellor may at any time, subject to the provisions of this section, request any person who has held the office of a judge of the Court of Appeal or of a judge of the High Court to sit and act as a judge of the Court of Appeal, and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of the Court of Appeal: Provided that nothing in this section shall be deemed to require any such person as aforesaid to sit and act as a judge of the Court of Appeal unless he consents so to do.

If the necessity for utilizing this provision does not arise, the Chief Justice will not utilize it. It is only an enabling provision.

Both the Drafting Committee and the Special Committee agreed that this article should be retained but with the omission of the words "subject to the provisions of this article" as they are redundant.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

Views of the Federal Court and of the Chief Justices of the Provincial High Courts—Articles 107 and 200 : It is not clear whether the person requested to sit and act as a judge of the Supreme Court and of a High Court will be entitled to draw the salary of such judge. Does the term "privileges" include the right to draw salary? The matter should be made clear. If such person is to be paid the salary fixed for the office, these articles would enable the Chief Justice to circumvent the provisions for compulsory

retirement. The matter would seem to require further consideration from this point of view.

Note : These two articles follow closely section 8 of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5-Ch. 49). The possibility that the Chief Justice of India or of a High Court would try to circumvent the provisions of the Constitution may well be left out of account.

ARTICLE 109

B. Pattabhi Sitaramayya and others* : That in article 109, paragraph (i) of the proviso be deleted.

Note : This amendment seeks to delete para (i) of the proviso to article 109. If this para is deleted then all treaties, agreements, engagements, *sanads* and other similar instruments which were entered into or executed by an Indian State before the commencement of the Constitution and have or have been continued in operation will be subject to the jurisdiction of the Supreme Court and this may lead to grave complications. This amendment should not therefore be accepted. It should be noted that under article 119(2) the President may, if he thinks fit, refer any dispute arising out of such treaties etc. to the decision of the Supreme Court.

B. Pattabhi Sitaramayya and others* : That in paragraph (ii) of the proviso to article 109, the following be added at the end :

and provides a particular machinery for its settlement.

Note : This amendment is hardly necessary, for an express provision in an instrument that the jurisdiction of the Supreme Court shall not extend to a dispute arising out of any provision of such instrument should suffice to exclude the jurisdiction of the Supreme Court. The machinery for the settlement of the dispute may be found elsewhere than in the instrument out of which the dispute arises.

ARTICLE 110

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that the Explanation to article 110 should be omitted. He is of opinion that the Explanation is unnecessary, for the point is *not* what the possible result of the Supreme Court decision would be, but what the result of the actual decision appealed against *is*. He has further stated that cases decided under section 109 of the Code of Civil Procedure, 1908, show the great variety of circumstances under which the question may arise, and in his opinion the Supreme Court should be left free to develop the law according to

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

requirements presented by actual litigation and any limiting provision in the Constitution is not only uncalled for, but may be quite embarrassing.

Views of the Federal Court and of the Chief Justices of the Provincial High Courts : Recently the Federal Court had occasion in *S. Kuppuswami Rao v. The King* to consider the meaning of the expression "final order" in section 205 of the Government of India Act, 1935. The Constituent Assembly may consider what meaning they propose to give to the expression in the Act.

Note : The Drafting Committee considered the insertion of this Explanation to be necessary in view of the recent decision of the Federal Court as to the meaning of the expression "final order" in section 205 of the Government of India Act, 1935 in *S. Kuppuswami Rao v. The King*. The Drafting Committee wanted to set at rest any doubt as to the meaning of the words "final order" in article 110.

Drafting Committee : That in clause (3) of article 110, for the words "not only on the ground that any such question as aforesaid has been wrongly decided, but also," the words "on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court," be substituted.

Note : The Federal Court and the Chief Justices of the Provincial High Courts consider that the scope of an appeal under clause (3) of this article should not extend to other than constitutional questions except with the leave of the Supreme Court. Otherwise the appellant in a civil appeal of petty value and in every criminal appeal involving a constitutional question would be able to agitate even pure questions of fact in the face of concurrent findings of the courts below, a result which, they believe, could not have been intended. Under the corresponding provisions of the present Constitution Act [section 205(2)], leave of the Federal Court is necessary in such cases, and a similar limitation is considered necessary in the appellant's right to raise other grounds.

The Drafting Committee did not consider that it was necessary to impose any such limitations on the right of the appellant to raise other grounds. If, however, it is decided to accept this suggestion, then the proposed amendment would be necessary.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 111

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in sub-clause (a) of clause (1) of article 111, for the words "twenty thousand rupees" the words "ten thousand rupees" be substituted.

Note : The reason for raising the limit was that what was worth Rs. 10,000 in pre-war days is now worth double that amount or more. The

Special Committee also considered this matter and was of the view that the words "twenty thousand rupees" should be retained in sub-clause (a) of clause (1) of article 111.

In the opinion of the judges of the Patna High Court, there appears to be no reason why the limit of ten thousand rupees now applying in the case of appeals to the Privy Council should be raised to twenty thousand rupees.

The Drafting Committee's reason for raising the limit was that what was worth Rs. 10,000 in pre-war days is now worth double that amount or more. However, as a compromise, the Drafting Committee recommended that in sub-clause (a) of clause (1) of article 111, the words "twenty thousand rupees" be changed to "fifteen thousand rupees".

The Special Committee did not agree to the recommendation of the Drafting Committee that the words "twenty thousand rupees" in sub-clause (a) of clause (1) of article 111 should be changed to "fifteen thousand rupees", and was of the view that the words "twenty thousand rupees" should be retained in that sub-clause.

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that article 111 should be redrafted on the lines of sections 109, 110 and 111 of the Code of Civil Procedure. He is of opinion that article 111 as it is drafted implies that the certificate of the High Court is conclusive and the Supreme Court would not be able to call its correctness in question. He says that at one time such conclusiveness was the rule for appeal to the Privy Council (*See 49 Indian Appeals*, p. 211). But since then the rule has changed. He does not think that it is really intended to take away the power of the Supreme Court to pronounce that the leave was wrongly granted and to refuse to hear the appeal in consequence. He further says that literally taken article 111 allows *direct* appeal to the Supreme Court from *every* judgment, decree or final order of the original side of a High Court and that any subsidiary legislation would not affect the right given by the Constitution.

Note : If it is decided to provide specifically for the power of the Supreme Court to refuse to hear an appeal on the ground that the certificate was wrongly granted and also to bar certain appeals to the Supreme Court as referred to in clause (a) of section 111 of the Code of Civil Procedure, 1908, then the following amendment would be necessary :

To clause (1) of article 111 the following proviso be added :

Provided that :

- (a) nothing in this clause shall affect the power of the Supreme Court to refuse to hear an appeal on the ground that the certificate granted by the High Court in respect of such appeal was wrongly granted ;
- (b) no appeal shall lie to the Supreme Court from a judgment, decree or order passed by one judge of a High Court or by two or more judges of a High Court where such judges are equally divided in opinion and

do not amount in number to a majority of the whole of the judges of the High Court for the time being.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that in sub-clause (a) of clause (1) of article 111, for the word "twenty" the word "ten" be substituted.

Note: The Special Committee considered this point and was of the view that the words "twenty thousand rupees" should be retained in this sub-clause. Attention is invited in this connection to the note on the amendment proposed by R. R. Diwakar and S. V. Krishnamoorthy Rao.

Jaya Prakash Narayan: The following words should be dropped from articles 111 and 112:

except the States for the time being specified in Part III of the First Schedule.

Note: This amendment seeks to extend the provisions of articles 111 and 112 to decisions of High Courts and other courts in Indian States. The States cannot be on a par with the Provinces as regards the appellate jurisdiction of the Supreme Court unless they accede to the new Union with respect to all matters enumerated in the Union and the Concurrent Lists. This amendment cannot therefore be accepted.

Drafting Committee: That in clause (2) of article 111, for the words "the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided" the words "a substantial question of law as to the interpretation of this Constitution has been wrongly decided" be substituted.

Note: The Federal Court and the Chief Justices of the Provincial High Courts consider that the last two lines in clause (2) of this article appear to be somewhat involved. In their view, the substitution of "that a substantial question of law as to the interpretation of this Constitution has been wrongly decided" would perhaps make it simpler.

This suggestion may be accepted and hence the proposed amendment.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 112

Drafting Committee: That in article 112, the words "in cases where the provisions of article 110 or article 111 of this Constitution do not apply" be omitted.

Note: Article 112 is intended to confer on the Supreme Court unfettered power to grant special leave to appeal to the court from any judgment, decree or final order passed or made by any court or tribunal in the territory of India (excluding the Indian States). But the final words "in cases where the provisions of article 110 or article 111 of this Constitution do not apply" are ambiguous. They were intended to refer to cases where no appeal lies to

the Supreme Court under the provisions of article 110 or 111; but they are capable of being interpreted as referring to cases where the High Court has no power to grant a certificate under either of these articles, so that any case where the High Court has such power but does not actually grant a certificate would be excluded. To make the real intention clear, the ambiguous words may be omitted. Hence the amendment suggested.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 113

Jaya Prakash Narayan : Article 113 should be deleted and the procedure for appeals from High Courts in Indian States should be similar to the procedure prescribed for appeals from High Courts of Provinces.

Note : The procedure for appeals from High Courts in Indian States to the Supreme Court cannot be the same as that prescribed for appeals from High Courts in Provinces to the Supreme Court for some of the Indian States may accede to the new Union subject to terms, as has been recognized in article 225 of the Draft Constitution, and unless an Indian State consents, it cannot be on a par with a Province as regards the appellate jurisdiction of the Supreme Court. Provision has however been made in article 114 of the Draft Constitution for the conferment of additional jurisdiction upon the Supreme Court by special agreement between the Union and an Indian State with regard to such matters as may be specified therein.

Article 113 follows the recommendations of the *ad hoc* Committee on Supreme Court adopted by the Constituent Assembly. The committee was of opinion that as regards the Indian State units, there were at least two classes of cases where, in the interests of uniformity, it was clearly desirable that the final decision should rest with the Supreme Court, namely :

- (1) cases involving the interpretation of a law of the Union, and
- (2) cases involving the interpretation of a law of a unit other than the State concerned.

B. L. Mitter, one of the members of the committee, suggested that such uniformity could be obtained either by invoking the appellate authority of the Supreme Court or by a reference of the particular issue to the Supreme Court. The Drafting Committee preferred the latter course and article 113 has been drafted accordingly.

This amendment which seeks to omit article 113 cannot therefore be accepted.

ARTICLE 115

Drafting Committee : That in article 115, the words and brackets "(which relates to the enforcement of fundamental rights)" be omitted.

Note: The Drafting Committee was of the view that these words should be omitted as they are redundant.

The Special Committee agreed to this amendment.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 119

The Editor of the Indian Law Review and some other members of the Calcutta Bar have expressed the view that article 119 should be deleted for the following reasons:

While appreciating the utility of a provision like this for prompt despatch of official business, it appears to us undesirable that the Supreme Court will at the behest of the executive express views on hypothetical questions extra-judicially. This, in effect, implies a sort of legislative power.

Pronouncement by the Supreme Court in such cases must necessarily be a stumbling block to the litigants later on seeking adjudication on those issues while the opinion itself has been reached without the assistance of the counsel of the parties. The American method of limiting the jurisdiction only to justiciable issues, "cases" and/or "controversies" is not only adequate but also preferable. We feel that law officers of the Government are quite competent to guide the executive in this matter.

Note: Article 119 follows the recommendation of the *ad hoc* Committee on Supreme Court about the advisory jurisdiction of such court which has been adopted by the Constituent Assembly. Attention is invited to paragraph 11 of the report of the committee printed as appendix to the Report of the Union Constitution Committee*.

ARTICLE 121

Calcutta Weekly Notes have offered the following criticisms:

(i) The provision in article 121(1)(b) empowering the Supreme Court to frame rules by which a time limit can be imposed on advocates for making their submission is unnecessary.

(ii) The provision in article 121(2) regarding the constitution of benches to hear "constitutional" cases is vague and meaningless.

Note: (i) This provision is being deleted. See amendment proposed by the Drafting Committee and note thereon.

(ii) There can hardly be any objection to the power for constituting benches to hear "constitutional" cases being given by rules of procedure. The proviso to article 121(2) has a very important object: to prevent the

court being "packed" by the exclusion of certain judges. A drafting change has already been proposed to make its meaning clearer. See amendment proposed by the Drafting Committee and note thereon.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that in clause (1) of article 121 the words "with the approval of the President" be deleted.

Note: This amendment involves a question of policy. Clause (1) of article 121 follows sub-section (1) of section 214 of the Government of India Act, 1935, in which the words "with the approval of the Governor-General" occur. The Federal Court judges and the Chief Justices of the Provincial High Courts have not objected to the retention of the words "with the approval of the President" in that clause.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that in sub-clause (b) of clause (1) of article 121 the words "constitution of benches and" be added after the words "rules as to the" and before the word "procedure".

Note: This amendment is hardly necessary as the rule-making provision in clause (1) of article 121 which confers power to make rules for regulating generally the practice and procedure of the court would include the power to make rules as to the constitution of benches. Attention is invited to the footnote on article 121 of the Draft Constitution.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that in sub-clause (b) of clause (1) of article 121 the words "and the time to be allowed to advocates appearing before the court to make their submissions in respect thereof" be deleted.

Note: The Special Committee has considered this point and has already recommended the deletion of these words. See amendment proposed by the Drafting Committee.

Note: A critic has suggested that in clause (4) of article 121, the reference to 'report' should be replaced by a reference to 'opinion', for 'opinion' being the judicial act is more important than the 'report' which is in the nature of a ministerial act automatically following the judicial act, namely, the opinion. The following amendment is accordingly suggested to make the intention clearer:

In clause (4) of article 121, for the words "No such report shall be made" the words "No such opinion" be substituted.

Drafting Committee: That in sub-clause (b) of clause (1) of article 121, the words "and the time to be allowed to advocates appearing before the court to make their submissions in respect thereof" be deleted.

Note: The Hon'ble the Chief Justice and judges of the Calcutta High Court have recommended that the words "and the time to be allowed to advocates, etc.," in article 121(1)(b) be deleted. They also desire to point out that the proviso to article 121(2) as drafted seems to suggest that each individual judge will decide whether he will sit or not, and are of opinion

that if the intention be that each judge, unless he is unable to sit owing to illness, personal interest or other sufficient cause, shall sit, the proviso may be amended to make the meaning clear.

The words "and the time to be allowed to advocates appearing before the court to make their submissions in respect thereof" in sub-clause (b) of clause (1) of article 121 were inserted by the Drafting Committee for the reasons stated by the committee in the footnote to that article of the Draft Constitution.

The change suggested in the proviso to clause (2) of this article by the Calcutta High Court can hardly be given effect to, for if it is made obligatory on every judge to sit unless owing to illness, personal interest or other sufficient cause he is unable to do so, then questions may be raised at every hearing about the due constitution of the court if any of the judges is absent from the court and the sufficiency of the cause for which he is unable to attend will require investigation.

The Drafting Committee was of the view that this article should be retained without any change.

The Special Committee, however, was of the view that in sub-clause (b) of clause (1) of article 121 the words "and the time to be allowed to advocates appearing before the court to make their submissions in respect thereof" should be omitted.

Hence the proposed amendment.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

Drafting Committee: That for the proviso to clause (2) of article 121 the following be substituted:

Provided that it shall be the duty of every judge to sit for the said purposes unless owing to illness he is unable to do so, or owing to personal interest or other sufficient cause he considers that he ought not to do so.

Note: This amendment is intended to meet the point raised by the judges of the Calcutta High Court in regard to the proviso to clause (2) of article 121 without creating the difficulty envisaged in this regard in the previous note.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment. The committee also decided to redraft clauses (3) and (4) as follows:

(3) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 119 of this Constitution save in accordance with an opinion also delivered in open court.

(4) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.

ARTICLE 122

B. Pattabhi Sitaramayya and others* : That in article 122, for the words "the Chief Justice of India in consultation with the President" the words "the President in consultation with the Chief Justice of India" be substituted.

Note : The provision for the fixation of the salaries, allowances and pensions of the officers and servants of the Supreme Court by the Chief Justice of India in consultation with the President contained in clause (1) of article 122 is based on the existing provision contained in section 242(4) of the Government of India Act, 1935, as adapted. The Drafting Committee considered such a provision to be necessary to ensure the independence of the judiciary, the safeguarding of which was so much stressed by the Federal Court and the High Courts in their comments on the Draft Constitution.

Drafting Committee : That for the existing article 122, the following be substituted :

122. *Officers and servants and the expenses of the Supreme Court* : (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of the court as he may direct :

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorized by the Chief Justice of India to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of India in consultation with the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.

Note : The Hon'ble the Chief Justice and Judges of the Calcutta High Court are of opinion that it should be clearly provided that the Chief Justice of India shall have the power of appointment, promotion, punishment and dismissal of the officers and servants of the Supreme Court

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

with the proviso that the salaries, allowances and pensions shall be fixed in consultation with the President.

The Federal Court and the Chief Justices of the Provincial High Courts have expressed the following views in regard to this article as well as article 205:

As regards the staff attached to the Supreme Court and the High Courts, recruitment and conditions of service are under the present Constitution in the hands of the Chief Justice of India and the Provincial Chief Justices respectively—*vide* section 242(4) read with section 241. As it is essential that the said officers should continue to have such power, it is suggested that a similar provision should be included in the new Constitution.

The Drafting Committee recommended that provisions similar to those contained in section 242 (4) of the Government of India Act, 1935, be included in the Draft to give effect to the suggestion of the Calcutta High Court. Accordingly, the committee suggested that for the existing article 122, the following article be substituted:

122. *Officers and servants and the expenses of the Supreme Court*: (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of the court as he may direct :

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorized by the Chief Justice of India to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of India in consultation with the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India and any fees or other moneys taken by the court shall form part of those revenues.

The Special Committee agreed to the revised draft of article 122 as recommended by the Drafting Committee subject to a slight modification in the proviso to clause (1) of that article. The amendment proposed shows the revised draft of article 122 as suggested by the Special Committee.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

THE HIGH COURTS

ARTICLE 191

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (1) of article 191, sub-clause (b) be deleted and the other sub-clauses be renumbered.

Note : If this amendment is accepted, and sub-clause (b) is deleted from clause (1) of article 191, then any new High Court constituted after the commencement of the Constitution will not be a High Court for the purposes of the Constitution, and the provisions relating to High Courts will not under clause (2) of that article apply to such High Court. This amendment cannot therefore be accepted.

Sub-clauses (b) and (c) are, however, defective in that the reference to "these States" is misleading, because the only States expressly mentioned previously are "the States for the time being specified in Part III of the First Schedule"—that is, the Indian States—while the intention of the Draft was quite different. Amendments have been suggested separately to remove this defect.

Note on article 191(1)(a) : In view of the recent establishment of High Courts in Assam and Orissa and the amalgamation of the Chief Court in Oudh with the High Court in Allahabad, sub-clause (a) of clause (1) of article 191 will require modification. The Ministry of Home Affairs has suggested that the words "Assam and Orissa" should be inserted after the word "Nagpur", and the words "and the Chief Court in Oudh" should be omitted. The following amendment is accordingly necessary :

In sub-clause (a) of clause (1) of article 191, for the words "the High Court of East Punjab and the Chief Court in Oudh" the words "and the High Courts of East Punjab, Assam and Orissa" be substituted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment proposed by the Ministry of Home Affairs.

Drafting Committee : That for sub-clauses (b) and (c) of clause (1) of article 191, the following be substituted :

and

(b) any other court in the territory of India except the States for the time being specified in Part III of the First Schedule—

(i) which may be constituted or reconstituted under this chapter as a High Court ; or

(ii) which may be declared by the appropriate Legislature by law to be a High Court for the purposes of this Constitution.

Note : The use of the words "any of these States" in sub-clauses (b) and (c) of clause (1) of article 191 is not correct as the only States referred to

in that clause are the States for the time being specified in Part III of the First Schedule and it is clearly not the intention to refer to any court in those States in the said sub-clauses. Hence the proposed amendment.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

ARTICLE 192

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in the proviso to article 192, after the word "fix" the words "from time to time" be inserted.

Note : The amendment may be accepted, although, in view of section 14 of the General Clauses Act, 1897, which, under article 303(2), applies to the interpretation of the Constitution, it may not be strictly necessary.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that in article 192 the words "be a court of record and shall" should be omitted. He says that this expression which has been taken from English legal history has little meaning in Indian constitutional law, and that its omission will not affect the status of the High Courts which has been sufficiently described in the Constitution itself, and that, if thought otherwise, instead of using this borrowed expression, the substance of the matter should be stated, which, he admits, will not be found very easy.

Note : The expression "court of record" has also been used with reference to the Federal Court and the High Courts in the Government of India Act, 1935 (*vide* sections 203 and 220); thus it is now a well recognized expression in Indian constitutional law. It is difficult to state the substance of what is meant by the expression "court of record" as has been admitted by Gupta. There is therefore no harm in retaining this expression in this article and also in article 108 where it has also been used with reference to the Supreme Court.

NEW ARTICLE 192-A

G. S. Gupta : That after article 192, the following new article be inserted :

192-A. Proceedings of a High Court to be in the language or languages fixed by the Legislature of the State : All proceedings in a High Court shall be in the language or languages fixed by the Legislature of the State in which the High Court has its principal seat :

Provided that for a period of seven years from the commencement of this Constitution it shall be permissible to make use of the English language instead of or along with the language or languages so fixed.

Note: This amendment involves questions of policy. If this amendment is accepted, then it should be redrafted as follows :

After article 204, the following new article be inserted, namely :

204-A. *Language to be used in proceedings of a High Court:* All proceedings in a High Court shall be in such language or languages as may be determined by the Legislature of the State in which the High Court has its principal seat :

Provided that during a period of seven years from the commencement of this Constitution the English language may be used in such proceedings either in addition to or in place of the language or languages so determined.

ARTICLE 193

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (1) of article 193, the words "or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State" be omitted.

Note: It appears from the comments received from the various High Courts on this article that the general desire is that the age-limit should be fixed definitely in the Constitution itself instead of being left to each State Legislature. The Special Committee considered this matter and was of the view that the power to fix any age higher than sixty years but not exceeding sixty-five years for the retirement of judges of the High Courts should be conferred on Parliament and not on the Legislatures of the States and accordingly recommended that in clause (1) of article 193, for the words "by law of the Legislature of the State" the words "by Parliament by law" should be substituted.

R. K. Sidhva : That the following be added at the end of para (1) of clause (1) of article 193 :

Provided he is not disabled in any manner.

Note: This amendment is not necessary, for under para (b) of the proviso to clause (1) of article 193 read with clause (4) of article 103 a judge may be removed from his office on the ground of proved incapacity.

R. R. Diwakar and S. V. Krishnamoorthy Rao : That the following be added as para (d) of the proviso to clause (1) of article 193 :

(d) every judge shall be liable to be transferred to other High Courts.

Note: There is no bar under article 193 to a judge of one High Court being appointed a judge of another High Court. In fact, clause (c) of the proviso to clause (1) of article 193 provides that the office of the judge shall be vacated by his being appointed by the President to be a judge of the Supreme Court or of any other High Court. This amendment is therefore not necessary.

Tajamul Husain : (i) That in clause (1) of article 193, before the words "Chief Justice of India" the word "Supreme" be inserted. (ii) That in clause (1) of article 193 for the words "sixty years or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State" the words "sixty-five years" be substituted.

Note : The remarks on the amendment proposed by Tajamul Husain to article 103 will apply to this amendment.

The Special Committee considered this matter and was of the view that the power to fix any age higher than sixty years but not exceeding sixty-five years for the retirement of judges of the High Courts should be conferred on Parliament and not on the Legislatures of the States, and accordingly recommended that in clause (1) of article 193 for the words "by law of the Legislature of the State" the words "by Parliament by law" should be substituted.

The Ministry of Home Affairs has proposed on a suggestion from the Governor of Orissa (Kailas Nath Katju) that a convention should be established whereby a proportion of judges in every High Court could be recruited from outside the Province.

Note : There is no bar to the recruitment of judges of High Courts in any Province from outside the Province or to the transfer of a judge of a High Court to another High Court as will appear from clause (2) of article 193 and clause (c) of the proviso to clause (1) of the article. A convention may therefore be established whereby a proportion of judges in every High Court could be recruited from outside the Province and no amendment of the Draft Constitution for the purpose appears to be necessary.

The Federal Court and the Chief Justices of the Provincial High Courts have suggested that article 193 (1) may be worded in the following or other suitable manner to provide a safeguard against political, communal and party considerations being imported into the matter of appointment of judges of the High Courts :

Every judge of the High Court shall be appointed by the President by a warrant under his hand and seal on the recommendation of the Chief Justice of the High Court after consultation with the Governor of the State and with the concurrence of the Chief Justice of India...

Note : The procedure envisaged in the redraft of article 193(1) suggested in the memorandum would not be applicable in the case of appointment of the Chief Justice of a High Court. Moreover, the redraft does not provide for the case, however rare it may be, where the Chief Justice of the High Court and the Chief Justice of India do not agree. The existing provision meets all contingencies and was the result of prolonged consideration. Even in its present form, it goes beyond what has been attempted in other constitutions. In Canada, Australia, South Africa, and Ireland, the corresponding provision merely states that the judges shall be appointed by the

Governor-General, or the Governor-General-in-Council or the President, as the case may be : no particular procedure is prescribed in the Constitution Act. Judicial independence is secured in all these countries by (1) a provision that judges shall not be removed except upon an address presented by both Houses of Parliament and (2) a provision that their remuneration shall not be diminished during their continuance in office. Both these provisions are to be found in the Draft Constitution: *vide* articles 103(4); 193(1) proviso (b), 104, and 197; indeed, article 103(4) goes further than these other constitutions in requiring a two-thirds majority in each House.

Comments of Chief Justice Ram Lal of the East Punjab High Court :

The age-limit should be fixed uniformly for all States forming part of the Union of India, and be fixed in the Constitution Act itself and be liable to alteration only in the manner in which the Constitution can be amended.

If it is left to the Legislature of the State to raise the age limit, it would mean that the age limit can be raised only if the political party commanding a majority so desires. Such power would virtually be left to the discretion of the Ministers and it is not unlikely that canvassing will start and, not inconceivably, bargains will be struck at the sacrifice of the dignity and the independence of the judiciary as a whole. If an Act of the Legislature is to determine the question, such an Act can be amended from time to time and the judges would be placed in a position of having to look to the executive for extension of their tenure.

Comments of Justice Meredith of the Patna High Court : It is undesirable to leave the fixation of the age-limit to the Provincial Legislature. There should not be different retiring ages in different States. This matter, like everything in connection with the High Court judges, should be centrally regulated. It is desirable that High Court judges should be completely independent so far as State Legislatures are concerned and should never be placed in a position of obligation to the State Government.

Comments of the Calcutta High Court : Their Lordships agree with the view expressed in the note to article 193. They are also of opinion that the age-limit should be provided in the Constitution Act itself and that the limit should be the same for the judges of the Supreme Court and for judges of the High Court. They are unable to discover any justification for fixing different limits in the two cases. Even though different conditions prevail in the different States, the judges of the Supreme Court will presumably be appointed from each of the States; and there seems no reason for requiring a judge sitting in his own State to retire at any earlier age than he would if he sat at the Capital.

Comments of the Nagpur High Court : Article 193(1) enables the Legislature of the State to fix the age-limit of a High Court judge up to sixty-five and section 197 enables the same body to fix the salaries and allowances etc. of the judges, subject to the proviso that the salary of the Chief Justice shall not be less than four thousand rupees etc.

This power conferred upon the Provincial Legislature is likely to lead to a legislative conflict of decisions on the same identical questions amongst the different Legislatures, as it is not improbable that one Legislature may fix the age limit at 61 or 62, another at 63, or 64 or 65, whereas some Legislatures may not raise it at all beyond 60. Similarly, different decisions may also be taken in regard to salaries, allowances, etc.

It is beyond question that such a conflict would be regrettable. The constitution of all High Courts should be uniform and homogeneous in regard to their personnel, age-limit, salaries, allowances, etc. and should be based upon the same principles and policy. This can be achieved only if the power is exercised in this behalf by the Union Parliament and not by the Legislature of a State.

Note : The Drafting Committee has taken the view that since the salaries of High Court judges are to be paid by the State concerned [See article 177(3) (d)], the fixing of the actual salary should be left to the Legislature of the State (article 197); but it has been provided in the Draft Constitution that the salary shall not be less than a certain figure. It should be remembered that even now the salaries of High Court judges vary from Province to Province ranging from Rs. 3,000 p.m. to Rs. 6,000 p.m.

It appeared to the Drafting Committee from some of the comments received on this article that the intention of this article had been misunderstood. It was not the intention that the Legislature of the State should, by law, extend the age-limit for each individual judge as he was about to retire. What was intended was that the Legislature of the State should pass a general law fixing the age-limit for all judges in the High Court in the State. In view, however, of the general desire that the age-limit should be fixed definitely in the Constitution itself instead of being left to each State Legislature, the words "sixty-five years" should be substituted for "sixty years or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State".

The Special Committee was of the view that the power to fix any age higher than sixty years but not exceeding sixty-five years for the retirement of judges of the High Court should be conferred on Parliament and not on the Legislatures of the States, and that the amendment proposed below should accordingly be made in article 193.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that from clause (1) of article 193 the words "the Governor of the State" should be deleted.

Note : The consultation with both the Chief Justice and the Ministry (the Governor in such cases would act on the advice of the Ministry) will enable the President to have before him the views both of the judiciary and the executive of the State with regard to the qualifications of the person concerned. It is not obligatory on the President to accept the views of the Governor. This provision also follows the existing practice.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that the words "or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State" should be deleted from clause (1) of article 193.

Note: This matter was considered by the Drafting Committee and the Special Committee. The Special Committee was of the view that these words should be retained with the substitution of the words "by Parliament" for the words "of the Legislature of the State".

The Bihar Lawyers' Conference at its fourth session at Gaya has suggested that in sub-clause (a) of clause (2) of article 193, the words "five years the post of a district and sessions judge" be substituted in place of the words "ten years a judicial office."

Note: The existing provision is more flexible. It would be possible under the existing provision to appoint a person who has held the post of a district and sessions judge for five years after he has held an inferior judicial office for five or more years. But if the appointment under sub-clause (a) of clause (2) of article 193 is restricted to persons who have held for five years the post of a district and sessions judge, outstanding members of the judicial service with long experience cannot be appointed if they have not held the post of a district and sessions judge for five years although they may otherwise be considered fit for such appointment. There is therefore an advantage in retaining the present provision especially in view of its flexibility.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in sub-clause (b) of clause (2) of article 193, after the word "years" the words "and is" should be inserted.

Note: This amendment seeks to restrict the recruitment of High Court judges under sub-clause (b) of clause (2) of article 193 only to practising lawyers. If this amendment is accepted then a person who has served as a district judge for seven or eight years and has also practised as an advocate of a High Court for seven or eight years before being a district judge will not be eligible to be appointed as a High Court judge whereas a member of the Provincial Judicial Service who has served as a 'munsif' for only ten years will be eligible to be so appointed, which is certainly anomalous. This amendment cannot therefore be accepted.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that clause (a) of Explanation I to clause (2) of article 193 should be deleted.

Note: This amendment is consequential on the amendment suggested by the sponsors of this amendment in sub-clause (b) of clause (2) of article 193. If the amendment suggested in sub-clause (b) of clause (2) of article 193 is not accepted, then this amendment will not be necessary.

Drafting Committee: That in clause (1) of article 193 for the word "State" the words "State for the time being specified in the First Schedule" be substituted.

Note: In view of the definition of "State" in article 128, doubts may be entertained as to whether the expression "State" used in sub-clause (a) of clause (2) of article 193 refers to a State for the time being specified in Part I of the First Schedule or to any State specified in that Schedule. Clearly, the intention, as will appear from Explanations I and II appended to that clause, is that the word "State" used in the sub-clause refers to any State for the time being specified in the First Schedule. The proposed amendment is intended to avoid any possible confusion.

Drafting Committee: For Explanation II to clause (2) of article 193, the following be substituted :

Explanation II: In sub-clause (a) of this clause, the expression "High Court with reference to a State for the time being specified in Part III of the First Schedule" means a court which the President has under article 123 declared to be a High Court for the purposes of articles 103 and 106 of this Constitution.

Note: This amendment is consequential to the amendment proposed by the Drafting Committee above.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the two amendments proposed by it.

ARTICLE 195

Drafting Committee: That in article 195 for the words "a declaration" the words "an affirmation or oath" be substituted.

Note: See note on amendment proposed by the Drafting Committee on article 81.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

ARTICLE 196

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai: That in article 196, clause (b) be deleted.

Note: Tej Bahadur Sapru is of opinion that temporary and acting judges do greater harm than permanent judges, when after their seat on the Bench for a short period they revert to the Bar. A seat on the Bench gives them a pre-eminence over their colleagues and embarrasses the subordinate judges who were at one time under their control and thus instead of their helping justice they act as a hindrance to free justice. In view of the opinion expressed by Tej Bahadur Sapru, than whom there is no better authority on the subject, this amendment should not be accepted.

T. A. Ramalingam Chettiar : That in clause (b) of article 196, the words "on having been recruited from the Bar" be omitted.

Note : This amendment may be accepted. The Drafting Committee and the Special Committee have also agreed to the omission of the words sought to be deleted by this amendment.

Atul Chandra Guha (Advocate, Calcutta High Court) has suggested that the words "on having been recruited from the Bar" should be omitted from clause (b) of article 196.

Note : The Drafting Committee has also recommended the omission of these words. See amendment proposed by Santhanam and others and note thereon.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that in clause (b) of article 196 the words "on having been recruited from the Bar" be deleted.

Note : The Drafting Committee considered this point and has already recommended the omission of these words from clause (b). This has been also agreed to by the Special Committee.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have suggested that in article 196:

- (a) for the word "India" the words "the State" should be substituted ; and
- (b) clause (b) should be deleted.

Comments of Chief Justice Ram Lal of East Punjab High Court : Persons recruited from the Bar hitherto have generally been leading personalities and their professional income at the time of their recruitment was far in excess of a judge's salary. A good many of such persons could not earn pensions at the age of sixty when their intellectual powers are near the peak and they would be deprived from earning a living of any kind. They would never have considered an appointment on the Bench if they had the remotest idea that after the age of sixty they could not resume practice, either in the Federal or the Supreme Court or in a High Court other than the one in which they were serving. Apart from the great hardship for any breach of faith in such cases, it will be difficult to recruit even moderate men from the profession and the High Court will tend to be over-weighted with officials from the Indian Civil Service and the Provincial Civil Services.

Comments of Jailal, lately Judge of the Punjab High Court : As there are judges who have been recruited from the services, that is, subordinate judiciary, who were advocates before they were appointed either as subordinate judges or as sessions judges, the words "on having been recruited from the Bar" in clause (b) of article 196 should be deleted so that the prohibition to practise will apply to the case of those judges also.

Comments of Justice Meredith of the Patna High Court : The ban on private practice by additional and temporary judges recruited from the Bar will lead to difficulties. It will make it impossible for any member of the Bar anywhere ever to accept additional or temporary appointments and it

may not always be found possible to fill such appointments from the Provincial Judicial Services.

Comments of the Calcutta High Court : The effect of the provision in article 196(b) will necessarily be that no practising member of the Bar will accept an additional or temporary judgeship, and all such appointments will have to be made from the Subordinate Judicial Services. It may often happen that there are no persons in the service suitable for such appointments. The Hon'ble the Chief Justice and judges recommend that article 196(b) be omitted and that only permanent judges be debarred from further practice at the Bar.

Comments of the Nagpur High Court : If the disqualification is restricted to a permanent judge, no reasonable man can question it as it lays down a very salutary principle; but surely there is apparently no justification for extending it to a temporary or an additional judge who is there on the Bench only for a short period. It is beyond doubt that the provisions of section 196, if retained on the statute, would prevent any member of the Bar from accepting either post, with the result that the Bar would be completely shut out and the appointment would be confined only to service judges.

Comments of Tej Bahadur Sapru : I have been strongly of the opinion that once a man has accepted a judicial position he should on no account revert to the Bar. Public and professional opinion in India is not so strong as it is in England. The English practice is never to allow a man to go back to the Bar once he has accepted a judicial appointment. Mr. Justice McCardie and Lord Birkenhead desired to go back to the Bar, but so strong was public and professional opinion in regard to this matter that they dared not actually carry out their threat. Unfortunately Mr. Justice McCardie later on committed suicide, so we cannot say what he would have done if he had lived. This question was raised before the Government of India in 1921-22 and I wrote a short note which is printed in the Notes and Minutes of the Law Member of 1920-22. You can easily get a copy of it from the Legislative Department. I give below the name of the book :

Notes and Minutes by Tej Bahadur Sapru, 1920-22, at page 45.

I must, however, point out that I had to consider the question regarding permanent judges going back to the Bar. I was definitely opposed to the idea of permitting such judges to resume practice. This practice of not allowing permanent judges to resume practice after their retirement still holds good. Whenever by mistake or for some other reason the Provincial Government has failed to obtain an undertaking from a man on his appointment as a permanent judge, he has taken advantage of this failure and resumed practice. I think the rule may still apply to all barristers and lawyers who accept a seat on the Bench either permanently or for a definitely long period of time, such as two years. Additional judges, under the old Constitution, were appointed by the Governor-General for a period not exceeding two

years. I do not know whether that condition has been reproduced in the proposed Constitution. This prohibition, however, does not apply to acting judges or temporary judges. I think the rule in future should be that any barrister or advocate, who accepts a seat on the Bench, shall be prohibited from resuming practice anywhere on retirement. I would not, however, apply this to temporary judges taken from the Services, who hold a seat on the Bench for a few months, but I would add that the practice of appointing additional and temporary judges should be definitely given up. When I said at the Round Table Conference that there were acting, additional and temporary judges in India, some of the English lawyers not accustomed to Indian law felt rather surprised. I am also of the opinion that temporary or acting judges do greater harm than permanent judges, when after their seat on the Bench for a short period they revert to the Bar. A seat on the Bench gives them a pre-eminence over their colleagues and embarrasses the subordinate judges who were at one time under their control and thus instead of their helping justice they act as a hindrance to free justice. I have a very strong feeling in this matter and have during my long experience seen the evil effects of unchecked resumption of practice by barristers and advocates. I know, however, of one instance of a retired judge of a High Court who was senior to me by many years and was asked to lead in a case in which I was appearing. He said to his credit that he definitely refused to accept the leading brief only on the ground that having retired from the Bench he would not go back to the Bar. Instances of men who follow a different practice are, however, more numerous. The rule, in my opinion, may be relaxed in favour of all judges who have before the passage of the new Constitution retired from the Bench. It is, however, said that the true remedy lies in increasing the pension of the judges and allowing the judges to secure some pension after short periods of office. I agree that this would be a very good ground for not permitting them to resume practice, but pension or no pension there is a long-standing convention in England to the effect that no member of the Bar should do anything which gives rise to the impression that he has a pull over his opponent by reason of having held a judicial post.

Note: The Drafting Committee agreed with the views expressed by Tej Bahadur Sapru and Jailal on this article, and recommended that the amendments now proposed below should be made in article 196.

The committee was also of opinion that it would be better to delete articles 198 and 199 relating to the appointment of temporary and additional judges than to retain those articles without the ban on practice by persons who held office as additional or temporary judges. The committee was of opinion that it was possible to discontinue the system of appointment of temporary and additional judges in High Courts altogether by increasing, if necessary, the total number of permanent judges of such courts.

The Special Committee agreed to the recommendation of the Drafting

Committee that article 196 should be retained subject to the amendments suggested by the Drafting Committee below. The Special Committee also agreed with the view expressed by the Drafting Committee that the system of appointment of temporary and additional judges of High Courts should be discontinued by increasing, if necessary, the total number of permanent judges of such courts.

Drafting Committee : (i) That in article 196, after the words "No person who has held office" the words "after the commencement of this Constitution" be inserted. (ii) That in clause (b) of article 196, the words "on having been recruited from the Bar" be deleted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to redraft article 196 as follows :

No person who has held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that in clause (b) of article 196 after the words "within the territory of India" the words "other than in the Supreme Court of India and except when his services are required by a State for the purposes of the State before any authority" should be added.

Note : There is hardly any reason for making an exception as proposed in this amendment.

ARTICLE 197

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in article 197, for the words "the Legislature of the State in which the Court has its principal seat" the word "Parliament" be substituted and the proviso be deleted.

Note : The constitution and organization of High Courts are mentioned in entry 2 of the State List in the Seventh Schedule to the Draft Constitution. Under article 220(1), the Legislature of a State for the time being specified in Part I of the First Schedule has the exclusive power to make laws with respect to the constitution and organization (which includes the power of fixation of salaries of the judges) of any High Court having its principal seat within such State. It is not clear why it is intended to transfer the power of fixation of salaries of the judges of the High Courts from the Legislatures of the States to Parliament by the proposed amendment especially when there is a constitutional safeguard in the proviso to article 197 as to the minimum salary to be payable to the judges of the High Courts. Further, the salaries of the judges of the High Courts are charged on the revenues of the States under sub-clause (d) of clause (3) of article 177 of the Draft Constitution. It would, therefore, be more appropriate to vest the power of fixation of salaries in the Legislatures of the States than to vest such

power in Parliament. Under the present Constitution, the salaries of the judges of the various High Courts are not uniform. Conditions may differ from State to State and so long as the salaries do not fall below the prescribed minimum, there is no reason why the fixing of the actual salaries should not be left to the Legislature of the State which has to pay them.

Tajamul Husain : That in the second proviso to article 197, the words "to his disadvantage" be deleted.

Note : The remarks on the amendment proposed by Tajamul Husain under article 104 in relation to the corresponding provision in respect of judges of the Supreme Court will also apply to this amendment.

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that in article 197 the words "as may from time to time be fixed by or under law made by the Legislature of the State in which the court has its principal seat, and until they are so fixed, shall be entitled to such salaries, allowances and rights in respect of leave of absence or pension" be deleted. The conference further proposed that the first proviso to article 197 be deleted. The conference also proposed that the word "further" in the second proviso be deleted.

Comments of Justice Meredith of the Patna High Court : The second proviso to article 197 is, I think, ambiguous and leaves it uncertain to what extent protection is provided. Does "appointment" mean "appointment to the State High Court" or the original appointment to the Provincial High Court? This will depend upon the interpretation of the word "become" in article 310. If it connotes a fresh appointment, then the proviso to article 197 gives no protection as regards previous salary. But if it connotes a continuance of appointment, then the protection is there.

Every High Court judge at the time of his appointment had a guarantee in the proviso to section 221 of the Government of India Act, 1935, that his salary would not be varied to his disadvantage after his appointment. In many cases the appointment must have been accepted only because reliance was placed upon that provision, and a lucrative practice was consequently given up at a heavy financial sacrifice. It would be, I think, highly unfair, by repealing the Government of India Act, to go back upon this guarantee, and presumably the intention in article 197 is to continue it. If so, the provision should be clarified. This can easily be done by substituting the word "continue" for the word "become" in article 310.

Justice Meredith also makes the same comments regarding article 104.

Comments of the Calcutta High Court : Article 104 read with article 308 and with Part IV of the Second Schedule deals with the salaries, allowances and conditions of service of judges of the Supreme Court. There is a saving proviso to article 104.

Apparently, the effect of these provisions is to reduce the salaries of the present judges of the Supreme Court, though, in view of the proviso, this

may not be the intention. There are similar provisions with regard to High Court judges in articles 197, 310 and Part IV of the Second Schedule.

It seems to their Lordships manifestly unjust to alter the terms of service of a judge to his detriment and at the same time to insist on that judge fulfilling undertakings given by him when accepting appointment. They recommend that the position be clarified and that if the intention is that the salaries of existing judges be reduced to the scale set out in Part IV of the Second Schedule, those judges be given the option of resigning and they be released from any undertakings given by them and they be allowed to practise once more at the Bar, notwithstanding anything contained in article 196; also that they be granted pensions proportionate to their service and in the case of non-citizens be also granted compensation for loss of career. If it is intended that the salaries of present judges are not to be reduced, provision should be made in paragraph 12(1) and (2) of the Second Schedule in Part IV.

Their Lordships recommend that in fixing the salaries of Chief Justices and judges, the salaries should be exempted from taxation.

Comments of Chief Justice Ram Lal of the East Punjab High Court : The proposal to reduce salaries of those who held permanent posts would be considered by them a violation of the assurances given in the Independence Act.

Note : The intention is that if a judge of a High Court in any Province holding office immediately before the date of commencement of the Constitution elects to become on that date a judge of the High Court in the corresponding State under the new Constitution, then he becomes a judge of such High Court and entitled to the salary etc. of such judge as provided for under article 197. So his continuance as a judge after the commencement of this Constitution is treated as a new appointment under this Constitution, subject to the new conditions of service.

The Drafting Committee suggested that the salary of the President of the Union should be fixed at Rs. 5,500 per month. In order to scale down the salaries of other officers proportionately, the Committee thought it appropriate to suggest that the salary of

- (a) the Chief Justice of India should be Rs. 5,000 per month;
- (b) a puisne judge of the Supreme Court should be Rs. 4,500 per month;
- (c) the Chief Justice of a High Court should be Rs. 4,000 per month;
- (d) a puisne judge of a High Court should be Rs. 3,500 per month.

The salaries drawn at present (they were lower until recently) in the U. S. A., Canada, Australia and South Africa are—

Chief Justice of the Supreme Court :

U. S. A.	25500 dollars per year.
Canada	20000 dollars per year.
Australia	4500 pounds (Australian) per year.
South Africa	3500 pounds per year.

Other judges of the Supreme Court :

U. S. A.	25000 dollars per year.
Canada	16000 dollars per year.
Australia	4000 pounds (Australian) per year.
South Africa	3250 pounds per year.

It would not be practical politics to exempt the salaries of judges alone from income-tax or any other tax to which the general community is subject. Even in England, they are not exempt from taxation.

The Drafting Committee has considered the question whether High Court judges who are now holding office on certain salaries should continue to receive the same salaries if they elect to remain on the Bench after the commencement of the new Constitution, or whether they should, upon so electing, receive the same salaries as those who are first appointed after the commencement of the new Constitution. The committee has endeavoured to fix a scale of salaries for High Court judges with due regard to the financial capacity of the country and to the salaries paid in other countries for similar work. It is undoubtedly true that persons appointed before the commencement of the new Constitution on higher salaries had a reasonable expectation that they would not be reduced at least for them and this argument would have considerable force if exceptions were made in favour of existing incumbents in other departments of the public service. But if there is a general scaling down of all salaries applicable to all officers, whether existing incumbents or new recruits, it would not be possible to make an exception only in the case of judges. The committee has also felt that it would be an anomaly to pay some judges one salary and their colleagues doing the same kind of work a higher salary. On the assumption that there is going to be a general scaling down of all salaries, the committee has decided to retain the provision in the Draft that when a High Court judge now in office elects to continue in office under the new Constitution, he should be subject to the new scale of pay proposed under the Constitution.

The Special Committee took the view that the amendments proposed by the Drafting Committee below should be made in article 197.

Drafting Committee : That in the proviso to article 197—

- (a) for the words "four thousand rupees" the words "three thousand and five hundred rupees", and (b) for the words "three thousand and five hundred rupees" the words "three thousand rupees" be substituted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLES 198 AND 199

Views of the Federal Court and of the Chief Justices of the Provincial High Courts : Is it intended that the President after appointing a temporary

judge for a specified time should have the power of revoking the appointment? It seems to us that it is not desirable to confer on the President such power of revocation. It is suggested that the clause may be omitted.

Note: Sub-clause (c) of clause (2) of article 198 follows the existing provision contained in sub-section (2) of section 222 of the Government of India Act, 1935, which contains the words "unless the Governor-General thinks fit to revoke his appointment".

The Bihar Lawyers' Conference at its fourth session at Gaya has proposed that a similar provision should be made for the appointment of temporary judges of the High Courts in article 198(2)(a) as has been made in article 193(1) in respect of the appointment of permanent judges of the High Courts.

Note: See notes on suggestions (*infra*) on articles 198 and 199 made by the Calcutta High Court.

Tajamul Husain: That in clause (1) of article 198, after the word "President" the following words be inserted:

after consultations with the Chief Justice of India and the Governor of the State.

Note: In the case of temporary appointment of the Chief Justice from among the other judges of the court, it is hardly necessary to cast a constitutional obligation on the President to consult the Chief Justice of India and the Governor of the State. Ordinarily, the seniormost puisne judge of the court is appointed to officiate as Chief Justice during the temporary vacancy in the office of the Chief Justice. However, under clause (1) of article 198 as at present worded, there is nothing to prevent such consultation being made by the President.

Tajamul Husain: That in sub-clause (a) of clause (2) of article 198, after the word "President" the words "after consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court of the State" be added.

Note: Both the Drafting Committee and the Special Committee were of the view that the system of appointment of temporary and additional judges of the High Courts should be discontinued by increasing, if necessary, the total number of permanent judges of such courts. If this is accepted, then the proposed amendment will not be necessary. If, however, article 198(2) is retained, the requirement as to previous consultation may be inserted in an Instrument of Instructions for the President. The Drafting Committee was of the opinion that it was desirable to append to the Constitution an Instrument of Instructions as there is one for the Governors, and that in the Instrument, instructions could be given as to the manner of appointment of judges as well as on other matters. As the appointment of temporary judges will be for a temporary period, it would appear to be sufficient to consult the Chief Justice of the High Court only. The judges of the

Calcutta High Court were of the same view and the Drafting Committee also agreed to this view.

Tajamul Husain : That sub-clause (c) of clause (2) of article 198 be deleted.

Note : Sub-clause (c) of clause (2) of article 198 follows the existing provisions in sub-section (2) of section 222 of the Government of India Act, 1935, which contains the words "unless the Governor-General thinks fit to revoke his appointment".

This amendment will not however be necessary if article 198(2) is omitted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor an amendment deleting clause (2).

The Bihar Lawyers' Conference at its fourth session has proposed that a similar provision should be made for the appointment of additional judges of the High Courts in article 199 as has been made in article 193(1) in respect of the appointment of permanent judges of the High Courts.

Note : See notes on suggestion (*infra*) to articles 198 and 199 made by the Calcutta High Court.

The Calcutta High Court has suggested that provision should be made that appointments of the acting and additional judges of the High Court shall be made in consultation with the Chief Justice of the High Court.

Note : The Drafting Committee was of opinion that requirements as to previous consultation need not be inserted in the Constitution itself. It would be desirable to append to the Constitution an Instrument of Instructions for the President just as there is one for Governors. In that Instrument, instructions could be given as to the manner of appointment of judges as well as other matters. The Drafting Committee agreed that the Chief Justice of the High Court should be consulted before any judge, whether permanent, additional or temporary, was appointed. The Drafting Committee was further of the opinion that it would be better to delete articles 198 and 199 relating to the appointment of temporary and additional judges than to retain those articles without the ban on practice by persons who held office as additional or temporary judges. The Drafting Committee was of the view that it was possible to discontinue the system of appointment of temporary and additional judges in High Courts altogether by increasing, if necessary, the total number of permanent judges of such courts.

The Special Committee agreed with the view expressed by the Drafting Committee that the system of appointment of temporary and additional judges of High Courts should be discontinued by increasing, if necessary, the total number of permanent judges of such courts.

To give effect to the suggestions of the Drafting Committee and the Special Committee, the following amendments are proposed :

(1) For article 198 the following article be substituted :

198. When the office of Chief Justice of a High Court is vacant or when

and such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other judges of the court as the President may appoint for the purpose.

(2) Article 199 be omitted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 200

Drafting Committee : That in article 200, the words "subject to the provisions of this article" be omitted.

Note : Justice Meredith of the Patna High Court considers the insertion of the words 'subject to the provisions of this article' meaningless and redundant. If they are cut out, he thinks the effect of the article will not be altered. The Honourable the Chief Justice and judges of the Calcutta High Court do not see the necessity for the provisions in article 200 in view of the provision for appointment of temporary and additional judges to the High Courts.

This article closely follows section 8 of the English Supreme Court of Judicature (Consolidation) Act, 1925 (15 and 16 Geo. 5-Ch. 49) which runs thus :

8. The Lord Chancellor may at any time, subject to the provisions of this section, request any person who has held office of a judge of the Court of Appeal or of a judge of the High Court to sit and act as a judge of the Court of Appeal, and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of the Court of Appeal :

Provided that nothing in this section shall be deemed to require any such person as aforesaid to sit and act as a judge of the Court of Appeal unless he consents so to do.

See also remarks under article 107 regarding a similar provision for the Supreme Court.

The Drafting Committee was of the view that this article should be retained with the omission of the words "subject to the provisions of this article" which are redundant.

The Special Committee agreed to the proposed amendment.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 202

Comments by V. T. Krishnamachari, B. H. Zaidi, Sardar Singhji of Khetri and Sardar Jaidev Singh : Clause (1) of article 25 guarantees the right to

move the Supreme Court of India by appropriate proceedings for the enforcement of the fundamental rights. It would be more appropriate if article 25 were amended to provide that in respect of an Indian State the highest judicial tribunal in that State should in the first instance be moved for the enforcement of any fundamental right and that the jurisdiction of the Supreme Court of India should be invoked by an aggrieved person by way of revision or appeal.

Note: To enable the High Courts in States for the time being specified in Part III of the First Schedule to exercise the powers exercisable by the Supreme Court under clause (2) of article 25, the Drafting Committee was of opinion that the amendment proposed below should be made in article 202.

The Supreme Court's power under article 25 is not exclusive. If any aggrieved party goes direct to the Supreme Court without just cause, it will be open to that court to refuse him the remedy he seeks and to direct him to the High Court in the first instance.

The Special Committee agreed to the amendment recommended in clause (1) of article 202 by the Drafting Committee.

Drafting Committee: That to clause (1) of article 202, the following paragraph be added:

In this clause, the reference to a High Court shall in respect of the issue of directions or orders referred to therein for the enforcement of any of the rights conferred by Part III of this Constitution, be construed as including a reference to a court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of articles 110 and 113 of this Constitution.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

ARTICLE 203

The Ministry of Home Affairs has proposed on a suggestion from the Governor of Orissa (Kailas Nath Katju) that a common national language should be adopted as the official language in High Courts.

Note: This involves a question of policy. Attention is invited in this connection to the amendment proposed by G. S. Gupta regarding new article 192-A.

Drafting Committee: That in article 203, for the marginal heading, the following be substituted:

Power of superintendence over all courts by the High Court.

That in clause (2) of article 203, before the words "The High Court may" the words "Without prejudice to the generality of the foregoing provision," be inserted.

Note: Justice Manohar Lall of Patna High Court "would give the High Court a wide power of superintendence and not confine it to administrative matters only".

It is not intended that the power of superintendence of the High Court should be confined to administrative matters only, and these amendments have been suggested by the Drafting Committee to make this intention clearer.

The Special Committee agreed to the amendments.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

ARTICLE 204

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that for the words "shall withdraw" in article 204, the words "may withdraw" should be substituted as he thinks that discretion should be left to the High Court to act according to the nature of the case.

Note: The use of the words "shall withdraw" is deliberate as the intention is that all questions of law as to the interpretation of the Constitution should be inquired into and decided by the High Court.

ARTICLE 205

Drafting Committee: That for article 205, the following be substituted :

205. *Officers and servants and the expenses of High Courts:* (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the court or such other judge or officer of the court as he may direct :

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the court or by some other judge or officer of the court authorized by the Chief Justice to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the court in consultation with the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the court shall form part of those revenues.

Note: The Chief Justice and judges of the Calcutta High Court are of opinion that it should be clearly provided that the Chief Justice concerned shall have the power of appointment, promotion, punishment and dismissal of the officers and servants of the High Court, with the proviso that their salaries, allowances and pensions shall be fixed in consultation with the Governor of the State.

The Drafting Committee was of the view that provisions similar to those contained in section 242(4) of the Government of India Act, 1935, should be included in the Draft to give effect to the suggestion of the Calcutta High Court.

Accordingly the committee suggested that for article 205, the following article should be substituted :

205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the court or such other judge or officer of the court as he may direct :

Provided that the Governor of the State in which the High Court has its principal seat may require that in such cases as he may direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the court or by some other judge or officer of the court authorized by the Chief Justice to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the court in consultation with the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of officers and servants of the court, and the salaries and allowances of the judges of the court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the court shall form part of those revenues.

The Special Committee agreed to the revised draft of article 205 as recommended by the Drafting Committee subject to a slight modification in the proviso to clause (1) of that article as shown in the proposed amendment.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

ARTICLE 206

T. A. Ramalingam Chettiar: (i) That in clause (1) of article 206, for the words "The Legislature of a State for the time being specified in Part I of

the First Schedule" the words "Parliament" be substituted. (ii) That in clause (1) of article 206, for the words "the State" the words "any State" be substituted. (iii) That in clause (2) of article 206 for the words "Legislature of the State" the word "Parliament" be substituted.

Note: The constitution and organization of High Courts is a subject enumerated in the State List (*vide* entry 2 of that List) in the Seventh Schedule. Under article 220(1), the Legislature of a State for the time being specified in Part I of the First Schedule has the exclusive power to make laws with respect to the constitution and organization of any High Court having its principal seat within such State—subject, of course, to the provisions of the Constitution.

The expression "Legislature of a State" has accordingly been used in article 206.

It should be noted that the powers of State Legislatures in this behalf have been severely restricted by various provisions contained in Chapter VII of Part VI of the Constitution. What remains is not much and in view of the fact that the expenses of a High Court fall almost entirely on the State concerned, it does not seem worth while to transfer the power mentioned in this article to the Union Parliament.

ARTICLE 207

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested the following amendments in article 207:

(a) For the words "any State other than, or any area not within, the State in which the High Court has its principal seat" the words "any area over which the High Court is or is not exercising jurisdiction, as the case may be" should be substituted.

(b) The proviso should be omitted.

He further questions as to what would be the procedure for determining the consent of the State if the proviso is retained. He also says that the expression "such *other* State" in the proviso is not clear.

Note: The use of the word "State" in the Draft Constitution has been considered necessary in view of the references to "State" in clauses (i) and (ii) of the proviso to article 207. The proviso has been inserted by the Drafting Committee after prolonged consideration. It has been proposed to replace the words "such other State" in clause (i) of the proviso by the words "such State". See the amendment proposed by the Drafting Committee to article 207 and note thereon. The consent of the State referred to in clauses (i) and (ii) of the proviso will be given by the executive Government of the State and it will be for the State to determine the procedure as to how such consent will be given.

Drafting Committee: That in clause (i) of the proviso to article 207, the word "other" be omitted.

Note : Some critics have taken exception to the use of the expression "such other State" in clause (i) of the proviso to article 207 on the ground that the word "other" therein is confusing. There does not appear to be any objection to the omission of the word "other" to avoid any possible confusion. Hence the proposed amendment.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

THE SUBORDINATE COURTS

NEW ARTICLES 209-A TO 209-C

The Editor of the Indian Law Review and some other members of the Calcutta Bar have expressed the view that in a federal constitution, where the independence of the judiciary and its separation from the executive are essential, the control of the subordinate judiciary should remain with the High Courts, and have therefore suggested that sections 254 and 255 of the Government of India Act, 1935 should be retained *mutatis mutandis*.

Note : Attention is invited in this connection to the amendment proposed by the Drafting Committee which seeks to insert the new articles 209-A to 209-C containing provisions similar to those contained in sections 254 and 255 of the Government of India Act, 1935, and also to the notes on that amendment separately recorded.

The Bihar Lawyers' Conference at its fourth session has proposed that provisions should be made in the Constitution of the Union of India regarding district judges etc., subordinate civil judicial service and subordinate criminal magistracy equivalent to sections 254, 255 and 256 of the Government of India Act, 1935.

Note : The Drafting Committee has recommended the insertion of necessary provisions which have generally been agreed to by the Special Committee. See amendment proposed by the Drafting Committee and note thereon.

Jaya Prakash Narayan : The following new article 209-A be added after article 209 :

209-A. The judicial power shall be separated from the administration in all instances. Judges shall not be required to exercise any executive function or power. They may, however, be entrusted with investigations of a quasi-judicial character.

Note : This amendment seeks to insert a new article 209-A after article 209 to provide for the separation of the judiciary from the executive. The Drafting Committee has already considered this point and has recommended the insertion of a new article 39-A in Part IV dealing with directive principles of State Policy to secure the separation of the judiciary from the executive. The Special Committee also accepted the recommendation of

the Drafting Committee as to the insertion of that new article subject to slight verbal change. The new article as adopted by the Special Committee stands thus:

39-A. The State shall take steps to secure that within a period of three years from the commencement of this Constitution there is separation of the judiciary from the executive in the public services of the State.

Views of the Federal Court and of the Chief Justices of the Provincial High Courts: The position of the subordinate judiciary in relation to the Provincial executive was considered at the conference of the judges of the Federal Court and of the Chief Justices of the Provincial High Courts, and it was regarded as essential that the members of that service should not be exposed to the extraneous influence of members of the party in power. Under the existing Constitution, the appointment, posting and promotion of district judges are in the hands of the Governor who acts on the advice of his Council of Ministers. Appointments to other posts in the service are also made by the Governor from persons included in the list of eligible candidates made by the Provincial Public Service Commission, while the posting and promotion of and the grant of leave to these officers are left in the hands of High Courts [*vide* sections 254(1) and 255(2) and (3) of the Government of India Act, 1935]. There are no corresponding provisions in the Draft Constitution. So long as the subordinate judiciary, including the district judges, have to depend on the Provincial executive for their appointment, posting, promotion and leave, they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties. It is, therefore, recommended that provision be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the district judges.

Note: The views expressed above have been given effect to in the recommendation made by the Drafting Committee for the insertion of a new Chapter VIII in Part VI containing articles 209-A, 209-B and 209-C. The Special Committee has also agreed to this recommendation of the Drafting Committee, subject to certain modifications. The remarks made in the notes under new articles 209-A to 209-C may be seen in this connection.

Drafting Committee: That after article 209, between Chapters VII and IX of Part VI, the following be inserted:

CHAPTER VIII

SUBORDINATE COURTS

209-A. *Appointment of district judges, etc.:* (1) Appointments of persons to be district judges in any State shall be made by the Governor of the

State in consultation with the Chief Justice of the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Explanation: In this and the next two succeeding articles the expression "district judge" includes "additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, district magistrate, additional district magistrate, sessions judge, additional sessions judge and assistant sessions judge."

209-B. *Recruitment to subordinate judicial service:* (1) The Governor of each State shall, after consultation with the State Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate judicial service of the State.

(2) The State Public Service Commission for each State, after holding such examinations, if any, as the Governor may think necessary, shall from time to time, out of the candidates for appointment to the subordinate judicial service of the State, make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists.

Explanation: In this and the next succeeding article, the expression "subordinate judicial service" means a service consisting exclusively of persons intended to fill judicial posts inferior to the post of district judge, whether civil or criminal.

209-C. *Control over subordinate courts:* Parliament shall by law provide for the control by a High Court over all district courts and courts subordinate thereto in any State in relation to which the High Court exercises jurisdiction including the posting and promotion of, and the grant of leave to, district judges in the State and persons belonging to the subordinate judicial service of the State and holding any post inferior to the post of district judge.

Note: The Drafting Committee was of opinion that the following new provisions should be inserted in the Draft in order to secure the separation of the judiciary from the executive and the control of the High Court over the judicial services, civil or criminal:

(1) After article 39, the following article be inserted:

39-A. The State shall take steps to secure that, within a period of three years from the commencement of this Constitution, there is complete separation of judiciary from the executive in the public services of the State.

(2) Between Chapters VII and IX the following be inserted :

CHAPTER VIII

SUBORDINATE COURTS

209-A. (1) Appointments of persons to be district judges in any State shall be made by the Governor of the State in consultation with the Chief Justice of the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than five years an advocate or a pleader and is recommended by the High Court for appointment.

(3) No person who has held office as a district judge in any State shall plead or act in the court of any district judge or district magistrate, or in any court or before any authority subordinate to any such court in that State.

Explanation : In this and the next two succeeding articles, the expression "district judge" includes "additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, district magistrate, additional district magistrate, sessions judge, additional sessions judge and assistant sessions judge."

209-B. (1) The Governor of each State shall, after consultation with the State Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate judicial service of the State.

(2) The State Public Service Commission for each State, after holding such examinations, if any, as the Governor may think necessary, shall from time to time, out of the candidates for appointment to the subordinate judicial service of the State, make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists.

Explanation : In this and the next succeeding article, the expression "subordinate judicial service" means a service consisting exclusively of persons intended to fill judicial posts inferior to the post of district judge, whether civil or criminal.

209-C. (1) The control over district courts and courts subordinate thereto including posting and promotion of, and the grant of leave to, district judges in any State and persons belonging to the subordinate judicial service, whether civil or criminal, of a State and holding any post inferior to the post of district judge shall be vested in the High Court.

(2) No magisterial powers or enhanced magisterial powers shall be granted to, and no magisterial powers shall be withdrawn from, any officer or person save with the previous approval of the High Court.

(3) Every district judge or any other person aggrieved by any order passed against him by the High Court in exercise of the powers conferred upon it by clause (1) of this article, shall have the right of appeal to the Governor who shall after consultation with the State Public Service Commission pass such orders thereon as may be deemed just and equitable.

The Special Committee agreed to the insertion of a new Chapter VIII between Chapters VII and IX in Part VI of the Draft as recommended by the Drafting Committee subject to the following modifications :

(1) In clause (2) of the new article 209-A for the words "five years" the words "seven years" should be substituted.

(2) Clause (3) of article 209-A should be omitted.

(3) For clauses (1) and (3) of article 209-C, a provision conferring power on Parliament to provide by law for the control of the High Courts over subordinate courts including the posting and promotion of, and the grant of leave to, district judges and persons belonging to the subordinate judicial service, whether civil or criminal, by the High Court should be substituted.

The new articles now proposed give effect to the suggestions of the Special Committee.

Although I have suggested these amendments in order to give effect to the views of the Special Committee, I must point out that several members of the committee were under a misapprehension. In order that the matter may be appreciated properly, it is necessary to explain the existing judicial system in some detail.

The administration of justice in each district is at present in two distinct halves : civil and criminal. The two halves meet in the district judge who is also the sessions judge and as such exercises criminal powers; but below him the two branches are distinct. On the civil side we have (in Bengal and certain other Provinces) subordinate judges and munsifs, and on the criminal side, district magistrates and subordinate magistrates.

The subordinate judicial service, as at present constituted, consists for the most part of subordinate judges and munsifs. Recruitment to their service is governed by section 255 of the Government of India Act, 1935, under which the Governor in consultation with the Provincial Public Service Commission and the High Court defines the standard of qualifications, the Provincial Public Service Commission holds examinations and makes a list of the successful candidates, and the Governor makes appointments from that list. The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service are in the hands of the High Court under section 255(3) of the said Act. The investing of selected officers with special powers is also in the hands of the High Courts under the relevant Civil Courts Acts.

The organization of administration of criminal justice follows at present a different pattern. District and subordinate magistrates are appointed by Provincial Governments under the provisions of the Code of Criminal

Procedure, there being no obligation to consult the High Courts. There is similarly no obligation to consult the High Courts in the posting and promotion of these officers or in investing any of them with special criminal powers.

The Drafting Committee was of opinion that the time had arrived for assimilating the two branches and placing them equally under the control of the High Court. The committee accordingly suggested certain amendments to be inserted in the Constitution, the effect of which was to extend to the criminal side of the administration the provisions which under the existing Constitution apply to the civil side. In the scheme the committee contemplated, the subordinate judicial service would comprise not only officers exercising civil jurisdiction but also officers exercising criminal jurisdiction and the whole of the service, in this extended sense, would be subject to the control of the High Court. Since, however, the Code of Criminal Procedure as now in force vests the power of appointing magistrates and of investing them with enhanced magisterial powers in the Provincial Government, the Drafting Committee found it necessary to suggest a special provision in the new Constitution that this power should not be exercised by the Provincial Government, save with the previous approval of the High Court. No similar provision was necessary on the civil side because under the existing Civil Courts Acts, the corresponding power is already in the hands of the High Court. The only objection taken to this particular provision proposed by the Drafting Committee was that the High Court might be flooded with references for previous approval. This does not seem to be an insuperable difficulty, because the Provincial Government will merely have to address the Registrar of the High Court mentioning that the district judge had been consulted in the matter and had agreed to the proposal. The High Court's approval would then be, at least in the majority of cases, merely a formal act entailing little or no additional work. At worst it may be necessary to strengthen the High Court staff which at present deals only with the corresponding problems on the civil side so as to enable it to cope with the references on the criminal side.

If these views are accepted, the proposals made by Drafting Committee in the new article 209-C may stand.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor new articles 209-A to 209-C; article 209-C was retained in the form in which it was originally drafted by the committee.

SECOND SCHEDULE

Part IV—Paragraph 10

K. Santhanam : That in paragraph 10 of Part IV of the Second Schedule, for the figures "5,000", "4,500", "4,000" and "3,500" the figures "4,000", "3,500", "3,000" and "2,500" be substituted respectively and the words "Part I of" in the proviso be deleted.

Note : The first part of this amendment which seeks to substitute different rates of salaries for the rates of salaries prescribed in paragraph 10 of Part IV of the Second Schedule involves questions of policy. The Special Committee was of opinion that the salaries of the judges of the Supreme Court and of the High Courts should be as follows :

Chief Justice of the Supreme Court	Rs. 5,000
Any other judge of the Supreme Court	Rs. 4,000
Chief Justice of a High Court	Rs. 3,500
Any other judge of a High Court	Rs. 3,000

The second part of this amendment which seeks to delete the words "Part I of" from the proviso to paragraph 10 of Part IV of the Second Schedule may be accepted.

Drafting Committee : (i) That in paragraph 10 in Part IV of the Second Schedule, for the entry "4,500 rupees" against "Any other judge of the Supreme Court" the entry "4,000 rupees" be substituted. (ii) That in paragraph 10 in Part IV of the Second Schedule, for the entry "4,000 rupees" against "Chief Justice of a High Court" the entry "3,500 rupees" be substituted. (iii) That in paragraph 10 in Part IV of the Second Schedule, for the entry "3,500 rupees" against "Any other judge of a High Court" the entry "3,000 rupees" be substituted. (iv) That to paragraph 10 in Part IV of the Second Schedule, the following be added at the end :

Provided further that if a person who has been serving as a judge of a High Court at the commencement of this Constitution and has elected on the date of such commencement to be such judge under article 310 of this Constitution was immediately before such date drawing a salary at a rate higher than that provided for in this paragraph, he shall in respect of time spent on actual service, be entitled to receive salary at the rate at which he was so drawing instead of at the rate specified in this paragraph.

(v) That in sub-paragraph (3) of paragraph 12 in Part IV of the Second Schedule for the words "for the purposes of this paragraph" the words "for the purposes of this Part" be substituted.

Note : The Special Committee was of opinion that the salaries of the judges of the Supreme Court and of the High Courts should be as follows :

Chief Justice of the Supreme Court	Rs. 5,000
Any other judge of the Supreme Court	Rs. 4,000
Chief Justice of a High Court	Rs. 3,500
Any other judge of a High Court	Rs. 3,000

The committee was also of the view that the existing judges of the High Courts should continue to get the same salaries which they would be drawing immediately before the commencement of the Constitution. Hence the proposed amendments.

Drafting Committee : That in paragraph 11 in Part IV of the Second Schedule after the words "Governor of the State" the words "in which any such High Court has its principal seat" be inserted.

Note : In paragraph 11 in Part IV of the Second Schedule, the expression

"the Governor of the State" is meant to refer to the Governor of the State in which the High Court has its principal seat. To make this clear, the proposed amendment would be necessary.

Drafting Committee : That in sub-paragraphs (1) and (2) of paragraph 12 of the Second Schedule, for the words "leave of absence or pension" the words "leave of absence (including leave allowances) and pension" be substituted.

Note : See note under "articles 104 and 197 and Part IV of the Second Schedule" containing the views of the Federal Court etc.

Drafting Committee : That in sub-clause (iii) of clause (b) of paragraph 13 in Part IV of the Second Schedule, after the words "Supreme Court" the words "or from the Supreme Court to a High Court" be inserted.

Note : In the definition of "actual service" in clause (b) of paragraph 13 in Part IV of the Second Schedule, joining time on transfer from a High Court to the Supreme Court or from one High Court to another has been included as "actual service". When a judge of a High Court who has been temporarily appointed to be a judge of the Supreme Court reverts to the High Court, he would require some joining time to resume his duties in the High Court and accordingly joining time on transfer from the Supreme Court to the High Court should be also included in this definition. Hence the proposed amendment.

Decisions of the Drafting Committee, October, 1948 : The Drafting Committee decided to redraft paragraphs 10, 11 and 12 of Part IV of the Second Schedule as follows :

10. There shall be paid to the judges of the Supreme Court and of each High Court within the territory of India except the States for the time being specified in Part III of the First Schedule in respect of time spent on actual service salary at the following rates per mensem, that is to say :

Chief Justice of the Supreme Court	5,000 rupees
Any other judge of the Supreme Court	4,000 rupees
Chief Justice of a High Court	3,500 rupees
Any other judge of a High Court	3,000 rupees :

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension :

Provided further that if a person who has been serving as a judge of a High Court at the commencement of this Constitution and has elected on the date of such commencement to become such judge under article 310 of this Constitution was immediately before such date drawing a salary at a rate higher than that provided for in this paragraph, he shall in respect of time spent on actual service, be entitled to receive salary at the rate

at which he was so drawing instead of at the rate specified in this paragraph.

11. The Chief Justice or any other judge of the Supreme Court or a Chief Justice or any other judge of a High Court within the territory of India except the States for the time being specified in Part III of the First Schedule shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President in the case of the Chief Justice or any other judge of the Supreme Court, or the Governor of the State in which any such High Court has its principal seat in the case of the Chief Justice or any other judge of such High Court, may from time to time prescribe.

12. (1) The rights in respect of leave of absence (including leave allowances) and pension of the Chief Justice or any other judge of the Supreme Court shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to any such judge of the Federal Court.

(2) The rights in respect of leave of absence (including leave allowances) and pension of the Chief Justice or any other judge of a High Court within the territory of India except the States for the time being specified in Part III of the First Schedule shall be governed or shall continue to be governed, as the case may be, by the same provisions which were applicable immediately before the commencement of this Constitution to any such judge of such High Court.

(3) For the purposes of this Part, a person who was serving as an acting judge or additional judge at the date of commencement of this Constitution shall be deemed to have been serving as a judge at that date if, but only if, his service as such acting judge or additional judge continued without interruption until his subsequent permanent appointment as a judge.

MEMORANDUM REPRESENTING THE VIEWS OF THE FEDERAL COURT AND OF
THE CHIEF JUSTICES REPRESENTING ALL THE PROVINCIAL HIGH COURTS OF
THE UNION OF INDIA
March, 1948

As printed copies of the Draft Constitution of India were circulated to the Federal Court and the High Courts for eliciting their views, it was thought desirable, in view of the great and fundamental importance of the document, to convene a conference of the judges of the Federal Court and the Chief Justices of the several High Courts so that there might be a full discussion of their views and formulation of their collective opinion on the subject. The conference was accordingly held on the 26th and 27th March, 1948. All the Chief Justices were present excepting those of the Calcutta and the

Patna High Courts which were represented by senior puisne judges authorized to speak on behalf of those courts. As it was felt that matters of general policy except in so far as they affected the judiciary do not primarily concern the courts, the discussion centred largely round provisions relating to the judiciary such as those concerning the jurisdiction and powers of the superior courts, the appointment and removal of the judges, the age limit for their retirement, their salaries and status etc. The memorandum which I have been authorized to sign on behalf of all the members of the conference and which I am sending herewith represents the unanimous view of all (except when otherwise expressly mentioned).

We have assumed that it is recognized on all hands that the independence and integrity of the judiciary in a democratic system of government is of the highest importance and interest not only to the judges but to the citizens at large who may have to seek redress in the last resort in courts of law against any illegal acts or the high-handed exercise of power by the executive. Thanks to the system of administration of justice established by the British in this country, the judiciary until now has, in the main, played an independent role in protecting the rights of the individual citizen against encroachment and invasion by the executive power. Unfortunately, however, a tendency has, of late, been noticeable to detract from the status and dignity of the judiciary and to whittle down their powers, rights and authority which if unchecked would be most unfortunate. While we recognize that the Draft Constitution proposes to liberalize in some respects the existing safeguards against executive interference and to enlarge their present powers, it is felt that further provision should be made in the same direction in order effectively to counteract the aforesaid tendency which is bound to become more pronounced as more power passes into the hands of political parties who will control and dominate the governmental machinery in the years to come. In making the following proposals and suggestions, the paramount importance of securing the fearless functioning of an independent, incorruptible and efficient judiciary has been steadily kept in view.

Appointment of judges—High Courts

The relevant provision is to be found in article 193(1). It is provided that the President shall make the appointment after consultation with the Chief Justice of India, the Governor of the State and (in the case of a puisne judge) the Chief Justice of the High Court of the State. Discussions at the conference revealed that the procedure followed after 15th August 1947 does not in practice always ensure appointment being made purely on merit without political, communal and party considerations being imported into the matter. Though it is acknowledged readily enough in principle that such considerations should not influence the appointment, this is not always kept in view in working the procedure in practice. The Chief Justice sends his recommendation to the Premier who consults his Home Minister. The recommendation of the Premier is then forwarded to the Home Ministry at

the Centre without even sending the recommendation of the Chief Justice along with it, the prescribed procedure being apparently understood as not rendering it obligatory for the Premier to do so. Cases might conceivably occur where suggestions might be conveyed to the Chief Justice to recommend certain lawyers either because they were expected to be "co-operative" from the Ministry's point of view or because in some cases the Ministry wants to get rid of them as they might be inconvenient in the political sphere. It appears that a certain Provincial Government has issued directions that recommendations of the Chief Justice instead of being sent to the Premier should be sent to the Chief Secretary, who in some instances has asked his Assistant Secretary to correspond further with the High Court in the matter. Thus, there seems to be a growing tendency to treat the High Court as a part of the Home Department of the Province. With a view to check this tendency which is bound to undermine the position and dignity of the High Courts and lower them in the estimation of the public, the judges assembled in conference were unanimously of opinion that a procedure on the following lines may be laid down for the appointment of High Court Judges :

The Chief Justice should send his recommendation in that behalf directly to the President. After consultation with the Governor the President should make the appointment with the concurrence of the Chief Justice of India. This procedure would obviate the need for the Chief Justice of the High Court discussing the matter with the Premier and his Home Minister and "justifying" his recommendations before them. It would also ensure the recommendation of the Chief Justice of the High Court being always placed before the appointing authority, namely, the President. The necessity for obtaining the "concurrence" of the Chief Justice of India would provide a safeguard against political and party pressure at the highest level being brought to bear in the matter. It need hardly be pointed out, in this connection, that under the system of responsible government envisaged by the proposed Constitution, the President who is to make the appointment will be the constitutional head of the executive guided by the advice of his Council of Ministers who will of necessity be drawn from the political party for the time being in power, and there may thus be some risk of political and party considerations influencing the appointment of the highest judicial officers in the country which, under the existing Constitution, has so far remained on the whole free from such influences, the Governor-General and the Governors not being elected nor owing their appointment to political parties in this country. It is therefore suggested that article 193(1) may be worded in the following or other suitable manner :

Every judge of the High Court shall be appointed by the President by a warrant under his hand and seal on the recommendation of the Chief Justice of the High Court after consultation with the Governor of the State and with the concurrence of the Chief Justice of India...

We do not think it necessary to make any provision in the Constitution for the possibility of the Chief Justice of India refusing to concur in an appointment proposed by the President. Both are officers of the highest responsibility and so far no case of such refusal has arisen although a convention now exists that such appointments should be made after referring the matter to the Chief Justice of India and obtaining his concurrence. If per chance such a situation were ever to arise it could of course be met by the President making a different proposal, and no express provision need, it seems to us, be made in that behalf.

The foregoing applies *mutatis mutandis* to the appointment of the judges of the Supreme Court, and article 103(2) may also be suitably modified. In this connection it is not appreciated why a constitutional obligation should be cast on the President to consult any judge or judges of the Supreme Court or of the High Courts in the States before appointing a judge of the Supreme Court. There is nothing to prevent the President from consulting them whenever he deems it necessary to do so.

The same principle of independence of the judiciary and its freedom from the control of the executive in the administration of justice requires not merely that the appointment of judges should be free from party or political interference but also that the jurisdiction of the High Courts, and the right to fix the salary, pension, leave and allowances of the judges should be taken out of the purview of the legislative power of the States and made central subjects. The obvious desirability of maintaining uniformity in the position, status and privileges of the judges of the High Courts in the States also reinforces our recommendation. If, however, it could not, for any reason, be accepted, legislation in respect of the above matters should be reserved for the President's approval. In this connection we should like to invite attention to para. XVIII(b) of the Instrument of Instructions issued to the Governors on 8th March 1937 wherein it was provided that the consent of the Governor-General should be required in respect of "any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by the said Act designed to fill". The alternative suggestion we have made above will ensure the continuance of this wholesome safeguard. If either of these recommendations is accepted the following provisions will have to be suitably modified :

Articles 191(1)(c) and proviso, 193, 197, 201, 206, 208, 220(1), 221(2) and (3) and entries (2) and (3) of List II of the Seventh Schedule.

The position of the subordinate judiciary in relation to the Provincial executive was also considered at the conference, and it was regarded as essential that the members of that service should not be exposed to the extraneous influence of members of the party in power. Under the existing Constitution the appointment, posting and promotion of district judges are in the hands of the Governor who acts on the advice of his Council of Ministers. Appointments to other posts in the service are also made by the Governor

from persons included in the list of eligible candidates made by the Provincial Public Service Commission, while the posting and promotion of and grant of leave to these officers are left in the hands of the High Court [*vide* sections 254(1) and 255(2) and (3) of the Government of India Act, 1935]. There are no corresponding provisions in the Draft Constitution. So long as the subordinate judiciary, including the district judges, have to depend on the Provincial executive for their appointment, posting, promotion and leave, they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties. It is therefore recommended that provision be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the district judges.

As regards the staff attached to the Supreme Court and the High Courts, recruitment and conditions of service are, under the present Constitution, in the hands of the Chief Justice of India and the Provincial Chief Justices respectively—*vide* s. 242(4) read with s. 241. As it is essential that the said officers should continue to have such power, it is suggested that a similar provision should be included in the new Constitution.

Age of retirement and right to practise after retirement

These subjects were discussed at considerable length at the conference and they were regarded as being to some extent interdependent.

The practice in recent times has been that when a member of the Bar is appointed a High Court judge, he has to give an undertaking not to practise after retirement in the High Court to which he is appointed and in the courts subordinate thereto but he is left free to practise in any other court. It is not clear whether it is intended by article 196 to bar such right to practise of judges who have retired before the commencement of the new Constitution. It need scarcely be pointed out that it would cause great hardship if such judges were suddenly deprived of a right which they have hitherto enjoyed, and the conference was of opinion that, in fairness, no such enlarged disability should now be imposed on them. If such judges are not intended to be affected, that should be made clear and article 196 should be suitably amended.

As to the desirability of the prohibition against practice in other cases the position is this. The prohibition is apparently based on the English tradition. In England, however, there is no practice of appointing temporary or additional judges. The enforcement of the ban in the case of additional or temporary judges would lead to the not very satisfactory result of preventing recruitment from the Bar to these posts. No doubt a district judge could be appointed to be an additional or temporary judge whenever it is found necessary to appoint such judges, but such appointment might lead to some sort of claim being put forward by the district judges so appointed when

permanent vacancies occur, and such claims might give rise to difficulties in recruitment from the Bar to those vacancies. Apart from this, the judges were of opinion that the scope of the existing disability should not be enlarged without a compensatory increase in the scale of pension and a higher age limit for superannuation. It was pointed out that in England a pension of a High Court judge (£3,500 p.a.) was fixed at 70 per cent of the salary (£5,000 p.a.). As judges of the Supreme Court and the High Courts should, after their retirement, be enabled to live in comfort and dignity consistently with their position and status as former judges of those courts, it was felt that the scale of pensions should be raised in this country also to more or less the same proportion, especially as it is proposed to enlarge the scope of the disability to practise after retirement. Some of the judges also expressed the view that the age of retirement of High Court judges should be raised to 65. Some of the judges, however, were of the opinion that owing to climatic conditions and other factors peculiar to India the age limit for High Court judges should not be raised beyond 62. All, however, agreed that the age limit for retirement should be fixed in the Constitution itself and should not be left to be determined by the State Legislatures. It was also pointed out that judges of the Supreme Court had ordinarily to be selected from among the Chief Justices and senior puisne judges of the High Courts, or from the leading members of the Bar. The reduced scale of salaries fixed in the Draft Constitution, it was felt, was too low to attract the latter. Nor would the Chief Justice of a High Court or a senior puisne judge with a normal expectancy of promotion to the Chief Justiceship have a sufficient inducement to accept a puisne judgeship in the Supreme Court if the age limit for retirement of the Supreme Court and the High Court judges is the same. The increase of Rs. 500 in the salary, which after deduction of taxes leaves only about Rs. 250 p.m., would be wholly insufficient to offset the increased expenditure entailed in setting up a new household in Delhi while continuing, as in most cases it would be found necessary for domestic reasons to continue, his establishment in his own place. Even under the present scale of salaries it is by no means uncommon for a judge of the Federal Court to find himself, month after month, financially worse off than he was while a judge of the High Court. The honour and prestige associated with a seat on the Supreme Court Bench have their limits as an attraction and it is the prospect of continuing in service for a period of five more years that chiefly attracts him to the new office. As this attraction would disappear if the age of superannuation for High Court judges also is raised to 65, judges for the Supreme Court will have to be selected from among junior and comparatively inexperienced judges of the High Court, and a court thus manned would hardly command the respect and confidence which the Supreme Court in the land ought to inspire. On a careful balancing of these considerations we have come to the unanimous conclusion that—

- (1) it is essential that a difference of 3 to 5 years should be maintained

between the retiring age of High Court judges and that of Supreme Court judges ;

- (2) age limit for retirement should be raised to 65 for High Court judges and to 68 years for Supreme Court judges;
- (3) only if this is done and the scale of pension is raised so as to bear the same proportion to their salary as in England, but not otherwise, should total prohibition against practice after retirement be enforced;
- (4) such prohibition should not be enforced against additional and temporary judges.

In this connection, we would invite attention to para. 12 of Part IV of the Second Schedule which seeks to preserve to the judges of the Supreme Court and of the High Courts the rights in respect of leave of absence and pension to which they are entitled at present. The pension is now fixed in sterling and is being paid according to the rate of exchange which has been fixed by the Secretary of State. It is suggested that the pension payable to the judges under the new Constitution should also be fixed in rupees by the Constitution itself. As regards leave of absence, the judges of the Federal Court are entitled under the present rules to leave of absence for six months on medical certificate once only during the whole period of their tenure of office and that too on a very small allowance. This was apparently considered sufficient as the Federal Court, under the existing Constitution, did not have much work to do. Under the new Constitution, however, the Supreme Court will have many more cases coming to it and will in consequence have to work during the greater part of the year. The rights in respect of leave of absence and allowances during the period of such leave for judges of the Supreme Court should therefore be fixed on a more liberal scale. It is suggested that the rules in regard to these matters applicable to High Court judges should be made applicable to the judges of the Supreme Court also and para. 12(1) amended accordingly. As regards provisions for leave of absence and allowances and salary to be paid during that period as and when an Order in Council or a law is intended to be made, we trust that we shall be consulted. We should also like to point out that, as a result of the definition of "actual service" in para. 13 (b) (ii) of Part IV of the Second Schedule, the salary which is declared in para. 10 to be payable to the judges of the Supreme Court and of the High Courts "in respect of the time spent on actual service" would not include any pay for the period of absence on leave. This, we presume, could not have been intended. This provision should be suitably amended so as to make it clear that the right of the judges to draw such allowances during periods of leave of absence as may be prescribed by any law or rules made in that behalf is not affected by anything contained in the Constitution.

Salaries of judges

As has been stated already, it is the unanimous view of the conference that the salary and allowances payable to the judges of the High Courts as well as

their rights in respect of leave and pension should not be liable to be interfered with by the Legislatures of the States concerned but should be made a central subject and included in List I of the Seventh Schedule.

In article 197 relating to the salaries etc. of the judges of the High Courts a constitutional guarantee is provided against reduction of the salary below the amounts specified therein. It is suggested that a similar provision should, for the same reasons, be included in article 104 relating to the salaries of the judges of the Supreme Court.

According to the transitional provisions of the Draft Constitution (articles 308 and 310), the judges of the Federal Court and of the High Courts of the Provinces holding office immediately before the date of the commencement of the Constitution shall "become" the judges of the Supreme Court and of the High Courts of the corresponding States and shall thereupon be entitled to the salaries, etc. as provided for in articles 104 and 197 respectively. In each of these articles there is a proviso to the effect that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment. We take it that the word "appointment" as applied to the judges holding office at the commencement of the Act refers back to their original appointment, as in their case there is no other appointment to which it could refer. If so, the provisos will operate to safeguard the salary and other rights of judges holding office at the commencement of the new Constitution. It is suggested that the position should be clarified by inserting in para. 10 of the Second Schedule a proviso to the effect that the salaries of judges who continue to hold office by virtue of the provisions of articles 308(1) and 310 shall continue to be governed by the same provisions which were applicable to them immediately before the commencement of the new Constitution. Para. 12 of Part IV of the Second Schedule may also be suitably amended. It need hardly be pointed out that any reduction of salary in their case would not only be an act of grave injustice to them but also an unwarrantable breach of faith. As already stated, they have imposed upon themselves a disability to practise, after retirement, the only profession for which they had been trained, relying on the assurance contained in the provisions governing their salaries etc. in force at the time of their appointment, that such salary shall not be varied to their disadvantage after their appointment. Sections 201 and 221 of the Government of India Act, 1935, contain express provisions to that effect. The Indian Independence Act, 1947 (10 and 11 Geo. VI Ch. 13) in pursuance of which the new Constitution is being framed repeats the assurance by declaring in section 10(2)(b) that the judges appointed by His Majesty before the appointed day and continuing to serve as such after that date "shall be entitled to receive from the Government of the Dominion and Provinces * * * the same conditions of service as respects remuneration, leave and pension * * * as that person was entitled to immediately before the appointed day".

A further guarantee is also extended to these judges by the communication to them of the telegram No. 2958-S dated 26th July, 1947 from H. E. the Governor-General to the Governors of Provinces. It is not our purpose here to canvass the legal aspect of these assurances and safeguards given and repeated from time to time, sensible as we are that the Constituent Assembly as a sovereign body has the power under section 6(2) of the same Act of brushing aside all those statutory guarantees and safeguards as having no binding force. But is this power, so excellent to possess, to be unfairly used to nullify assurances solemnly given and acted upon? We cannot believe that such a thing is intended. There is no provision in the Draft Constitution for reducing the salaries drawn by the present holders of other high offices in the State, and we are unwilling to assume that judges are intended to be the special targets for reduction of salaries. Indeed, so far from that appearing to be the case, the Draft Constitution itself provides similar guarantees to the judges in articles 104 and 197—guarantees which cannot, however, be expected to be taken seriously if those given and reiterated in the past are now to be ignored.

An analysis of the pay of the present permanent judges of the different High Courts in the Union of India shows that in the Lucknow and Nagpur High Courts, inclusive of the Chief Justice in each court, there are six and eight judges respectively. The total of their salaries will be increased and not decreased if the figures applicable to the other High Court judges, as mentioned in Part IV of the Second Schedule, are applied to them. In the remaining six High Courts, there are six Chief Justices and sixty-six judges. In the Federal Court there is a Chief Justice and two puisne judges. If the salaries of all these judges are reduced to the scale mentioned in Part IV of the Second Schedule, we find that the State would save about Rs. 2,50,000 (net) a year only. It is a matter for serious consideration whether in view of this small saving it is worth while breaking statutory assurances, creating general discontent and feeling of want of security in the highest judicial service.

If it is thought that the provisions found in the Government of India Act, 1935, and the Indian Independence Act, 1947, are no longer binding because under the new Constitution India is going to be a sovereign State, attention is invited to article 270 of the Draft Constitution. The intended Constitution is being framed under the authority conferred by the Indian Independence Act, 1947, and the proposed Act violates the assurances contained in section 10(2) of that very Act. It is a matter for consideration whether there should be any distinction between a statutory assurance given under section 10(2) of the Indian Independence Act, 1947, and rights and obligations covered by article 270 of the Draft Constitution.

It is therefore suggested that the salaries of the permanent judges holding office immediately before the commencement of the new Act should not be reduced at all. If this suggestion is not accepted and the reduced salaries

are not accepted by some of the judges (who may retire, instead of continuing) they may claim (a) a proportionate pension for the period of service rendered, (b) compensation, and (c) relief against the undertaking given by them when they accepted the office of judges. This position will have to be more seriously considered in the cases of European judges who have continued to serve depending on the assurances held out in the Indian Independence Act and the telegram of the Governor-General mentioned above.

As regards the proposed reduction of the salaries (apart from the retrospective operation of the new scale), it is the unanimous view of the judges assembled at the conference that the reduction proposed is not justified. The present salary of the High Court judges was fixed over 70 years ago and has since remained unaltered. If it is remembered that the salary was fixed at Rs. 4,000 a month when there was no income-tax to pay and the purchasing power of the rupee was comparatively high, it will be realized that the position of the judges was recognized to be *sui generis* as being one of great dignity and prestige, and they were expected to live in reasonable comfort maintaining their dignity and keeping themselves above temptation. Since then heavy taxes have been imposed which have substantially reduced the actual income, while the purchasing power of the rupee has steadily declined and wants of civilized life have multiplied, what used to be regarded as luxuries having become the necessities of life. In such circumstances, the judges are already hard put to make both ends meet, and any cut in their salary is bound to affect adversely their standard of life and thus lower their dignity and status *vis-a-vis* the other sections of the community, which in the larger interests of the community itself should rather be avoided. It is also to be borne in mind in this connection that High Court judges are normally to be recruited from the Bar and even now it is difficult, as those concerned with the selection of judges for the High Courts and the Federal Court must know, to find and persuade suitable and distinguished members of the Bar, whose professional incomes are often considerably higher, to accept judgeships. Such members will be less attracted to the Bench if the salary were to be reduced. This would lead to a deterioration in the calibre and efficiency of the judges, and the reputation and prestige of the highest court in the land will inevitably suffer. For all these reasons we would suggest that the proposal to reduce the salaries of judges be dropped.

Miscellaneous Remarks

Consistently with the general principles adumbrated in the foregoing we offer the following remarks on individual articles in the Draft Constitution.

Article 49: Provision may be made against the contingency of the Chief Justice of India not being available for administering the oath.

Article 50(3): It is perhaps desirable to provide for the appointment of

the investigating authority, as has been done in article 137(3) relating to the impeachment of the Governor.

Articles 67(2) (a) and 150(3) (a): Persons having special knowledge or practical experience of law may perhaps also be included among the members to be nominated under these articles.

Article 103 (1): There appears to be no reason why the minimum number of judges in the Supreme Court should be prescribed by the Constitution. The number may be left to be determined from time to time according to the volume of the work coming to the court.

Articles 103 (3) and 193 (2): It seems to us desirable to insert a provision in these articles to the effect that no person should be appointed a judge of the Supreme Court or of a High Court who has at any time accepted the post of a Minister in the Union of India or in a State. This is intended to prevent a person who has accepted office of a Minister from exercising his influence in order to become a judge at any time. It is the unanimous view of the judges that a member of the Indian Civil Service should not be a permanent Chief Justice of any High Court. Suitable provision should be made in this article for this.

Article 103 (4): We suggest that this should run on the same lines as article 304 relating to the amendment of the Constitution, that is to say, the address should be supported by a majority of the total membership of both Houses of Parliament and by a majority of not less than two-thirds of the Members present and voting.

Article 106(1): It is suggested that the words "duly qualified for appointment as a judge of the Supreme Court" may be inserted after the words "a judge of the High Court" in clause (1) of this article. We assume it is the intention that the judge to be selected for serving in the Supreme Court should be qualified for appointment as a judge of the Supreme Court. Every judge of a High Court need not necessarily be so qualified—cf. articles 103 (3) (a) and 193 (2) (a). The qualifying words we have suggested above also occur in section 202 (2), which is the corresponding provision in the present Constitution Act.

Articles 107 and 200: It is not clear whether the person requested to sit and act as a judge of the Supreme Court and of a High Court will be entitled to draw the salary of such judge. Does the term "privileges" include the right to draw salary? The matter should be made clear. If such person is to be paid the salary fixed for the office, these articles would enable the Chief Justice to circumvent the provisions for compulsory retirement. The matter would seem to require further consideration from this point of view.

Article 110 (3): We think that the scope of an appeal under this article should not extend to other than constitutional questions except with the leave of the Supreme Court. Otherwise the appellant in a civil appeal of petty value and in every criminal appeal involving a constitutional question would be enabled to agitate even pure questions of fact in the face of

concurrent findings of the courts below, a result which, we believe, could not have been intended. Under the corresponding provisions of the present Constitution Act [section 205(2)], leave of the Federal Court is necessary in such cases, and we consider that a similar limitation is necessary on the appellant's right to raise other grounds.

Article 110: Explanation: Recently the Federal Court had occasion in *S. Kuppuswami Rao v. The King* to consider the meaning of the expression "final order" in section 205 of the Government of India Act, 1935. The Constituent Assembly may consider what meaning they propose to give to the expression in the Act.

Article 111(2): The last two lines appear to be somewhat involved. The substitution of "that a substantial question of a law as to the interpretation of this Constitution has been wrongly decided" would perhaps make it simpler.

Article 198(2)(c): Is it intended that the President after appointing a temporary judge for a specified time should have the power of revoking the appointment? It seems to us that it is not desirable to confer on the President such a power of revocation. It is suggested that the clause may be omitted.

MEMORANDUM FROM THE MINISTRY OF HOME AFFAIRS ON THE PROVISIONS RELATING TO THE JUDICIARY

The Chief Justice of the Federal Court and the Chief Justices of the Provincial High Courts submitted a joint memorandum to the Hon'ble the Home Minister and to the Constituent Assembly incorporating their views on the provisions of the Draft Constitution dealing with the Supreme Court and the High Courts of States. This memorandum has been considered by the Drafting Committee and a joint meeting of the Union and Provincial Constitution Committees, and some of the recommendations of the Chief Justices have been accepted. Those that have not been accepted have been subjected to a careful scrutiny in the Ministry of Home Affairs and the view of the Ministry is that on the points noted below a communication should be addressed to the appropriate committee of the Constituent Assembly asking it to take into consideration the views of Government.

2. Under article 103(2) of the Draft Constitution, judges of the Supreme Court are to hold office till they attain the age of 65 and, under article 193(1), judges of High Courts are to hold office until they attain the age of 60 or such higher age not exceeding 65 as may be fixed in this behalf by a law of the Legislature of the State. The Chief Justices have suggested in their memorandum that the retiring age for High Court judges should be 65 and that for Supreme Court judges 68. The view of the Home Ministry is that the normal age for retirement should be 60 for High Court judges and 65 for Supreme Court judges, but the Constitution should

provide that, in exceptional circumstances, the appointing authority may extend the service of an individual judge, in the case of High Courts not beyond the age of 63 and in the case of the Supreme Court not beyond the age of 68. Experience has shown that most High Court judges are well past the peak of their usefulness by the time they attain the age of 60 and an automatic extension of the age limit would not be in the public interest. Where, however, an individual judge shows exceptional talent and vitality, the President may extend his service for a maximum period of three years. Such cases, however, are likely to be very few. There is also another objection to the provision in the Draft Constitution. As it leaves it to the Legislatures of States to decide whether the age limit should be extended in the case of all judges, there would be lack of uniformity. This would be undesirable in any case and would be particularly inconvenient as it would render difficult the transfer of judges from one High Court to another.

3. Article 196 of the Draft Constitution lays down that no person who has held office as a judge, additional judge or a temporary judge of the High Court shall plead in any court or appear before any authority within the territory of India. The Chief Justices in their memorandum have pointed out that the enforcement of the ban in the case of additional or temporary judges would lead to a not very satisfactory result and would prevent recruitment from the Bar to these posts. No doubt a district judge could be appointed to be an additional or temporary judge whenever it is found necessary to appoint such judges but such appointments might not always be satisfactory and by giving some sort of a claim for permanent vacancies, might give rise to difficulties in recruitment from the Bar. The Chief Justices are also of the opinion that the scope of the existing disability should not be enlarged without a compensating increase in the scale of pension and a higher age limit for superannuation.

The position at present is that persons appointed permanently to a High Court give an undertaking that they will not practise before any court within the jurisdiction of that High Court whereas persons employed as acting or additional judges are not required to give any such undertaking. The view of the Home Ministry is that this limitation should not be extended in scope. From experience, it is in a position fully to endorse the views of the Chief Justices that to impose a ban on practice on acting or additional judges would make recruitment from the Bar exceedingly difficult.

4. Article 197 of the Draft Constitution provides that the salaries and allowances and rights in respect of leave, pension, etc. of High Court judges shall be fixed by or under a law made by the State Legislature. The Home Ministry considers that it is most desirable that there should be uniformity in this respect and that the matters specified in article 197 should be settled, not by State legislation, but by legislation in the Union Parliament.

5. Article 197 read with Part IV of the Second Schedule provides that while the existing emoluments and conditions of service of High Court judges shall be preserved in the transition period, these may be amended by State legislation subject to the qualification that the salary of a Chief Justice shall not be less than Rs. 4,000 and that of a puisne judge less than Rs. 3,500. On the consideration of the Chief Justices' memorandum the Special Committee has agreed to provide that the existing judges in the High Courts should continue to get the same salaries as they were drawing immediately before the commencement of the Constitution. In regard to Supreme Court judges, the effect of articles 104 and 308(1) read with Part IV of the Second Schedule is the same as in the case of High Court judges, namely, that the salaries and conditions of service may be varied by Union legislation. The Special Committee have not agreed to extend to Supreme Court judges the privilege which they are prepared to extend to High Court judges, namely, to preserve the rights of Federal judges on the date the Constitution comes into force. The Home Ministry considers that there is no reason to differentiate between the High Courts and the Federal Court in this matter of salaries and considers that the salaries of all existing judges both of the Federal Court and the Provincial High Courts should be guaranteed by the Constitution. The Home Ministry is prepared, however, to make it a condition of all appointments made after the 1st November 1948 that the salaries will be subject to such changes as may be made by the appropriate legislative authority under the new Constitution.

In regard to other conditions of service also, the Home Ministry considers that the existing rights should be preserved by the Constitution except in the case of appointments made after the 1st November 1948. Any variation either in salaries or other conditions of service of existing High Court judges would not only not have any appreciable financial effect but would be unfair and create discontent and consequently would not be in the public interest.

It is not understood why, while the Constitution should provide a minimum salary for High Court judges, it should not do so for Supreme Court judges. The Home Ministry considers that a provision for a minimum salary for Supreme Court judges should also be made. It accepts the figures mentioned in section 10 of Part IV of the Second Schedule to the Draft Constitution.

Note by Alladi Krishnaswami Ayyar on the provisions relating to Judiciary : I have gone through the various criticisms of the provisions bearing upon the High Court and the Supreme Court, and I generally agree with the answers given by the Constitutional Adviser.

As regards the question of age the Drafting Committee, while not opposed in principle to the raising of the retiring age of judges in the High Court, was for leaving it to the Provincial Legislatures to raise the age if they chose, having regard to the conditions in different Provinces.

I do not see any difficulty in providing that the Chief Justice of the Supreme Court shall have the right to appoint the officers of the Supreme Court subject to confirmation if need be by the President and the Chief Justice of the High Court may appoint the officers in consultation or with the consent of the Government of the Province. I agree that the High Court must have a potent voice in the appointment of the subordinate judiciary, including the district judge, and must be consulted. I am not for interposing a Public Service Commission between the High Court and the Governor or Government. It is inconsistent with the dignity and position of the High Court to accord any such position to the Public Service Commission, having regard to the normal or usual constitution of the Commission. The High Court will take the place of the Public Service Commission so far as judicial appointments are concerned. I might mention that when under the Act of 1935 the Government asked one of the judges in Madras to act in an advisory capacity on the Public Service Commission, the judges refused to have anything to do with it.

I am glad that the Drafting Committee, in its conclusion with regard to the disability of the judges to practise, is fortified by the opinion of Tej Bahadur Sapru. Possibly, the position of temporary and acting judges might have to receive further examination at the hands of the Constituent Assembly.

I do not agree with the interpretation put by the Constitutional Adviser on the expression 'privileges' in the provision relating to *ad hoc* judges and retiring judges requested to assist the court. Under the English practice, the retired judge, who is called to assist the court, is not entitled to anything like salary. Normally, he gets his pension. That is why the consent of the judge is required. As regards *ad hoc* judges, in England when a judge of the High Court is summoned to take part in proceedings before the Court of Appeal, he does not get any additional salary (*vide* the terms of section 7, Judicature Act of 1925). If, so far as the *ad hoc* judges are concerned, it is intended to give them any additional remuneration, the point will have to be cleared up.

In arriving at the conclusion that the judges who have been taken over to the new dispensation are entitled only to the salaries under the new Constitution, two points will have to be remembered :

- (1) The courts are in one sense newly established under the new Constitution and the personnel of the judges are merely taken over to the new dispensation.
- (2) Even as a question of policy, it must be remembered that the salaries of the President and the Governor are fixed at Rs. 5,500 and Rs. 4,500 respectively, and secondly, most of the judges that have been appointed are new. If any reform is to be effected in salaries, it will take several years before anything like a reform is introduced into the higher ranks of the judiciary if the present salaries are to be perpetuated.

It was not the intention to extend the rule as to citizenship to judges who are taken over from the present regime to the new dispensation. I do not feel any difficulty about the construction. If any difficulty is felt by the other members, the matter may be cleared up and a clause may be added to the effect that the requirement as to citizenship does not apply to these people.

In regard to consulting the judges when a judge has to be appointed to the Supreme Court, it was felt that as the Chief Justice may be one of the persons thought of, it is not necessary to mention in particular that the Chief Justice must also be consulted.

11. *Auditor-General of India and Auditors-in-Chief for the States*

AUDITOR-GENERAL OF INDIA

ARTICLE 124

B. Pattabhi Sitaramayya and others* : That in clause (4) of article 124 for the words "Auditor-General in consultation with the President" the words "the President in consultation with the Auditor-General" be substituted.

Note : Clause (4) of article 124 was inserted in its present form by the Drafting Committee to maintain the independence of the Auditor-General of India.

ARTICLE 125

Note : The duties to be performed and the powers to be exercised by the Auditor-General of India are at present laid down in the Government of India (Audit and Accounts) Order, 1936. But the expression "existing law" used in the Explanation to article 125 does not include an Order-in-Council made under the Government of India Act, 1935 *vide* sub-clause (i) of clause (1) of article 303 of the Draft Constitution and accordingly a law made by Parliament referred to in article 125 will not include the said Order-in-Council. The following amendment is accordingly suggested in article 125 :

For the Explanation to article 125, the following Explanation be substituted :

Explanation : In this article, the expression 'law made by Parliament' includes any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution and for the time being in force in the territory of India.

*Shrimati G. Durgabai, Thakurdas Bhargava, B. V. Keskar, T. T. Krishnamachari, M. Ananthasayanam Ayyangar and K. Santhanam.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

SECOND SCHEDULE

Part V—Paragraph 14

K, Santhanam : That in paragraph 14 of Part V of the Second Schedule, for the word “four” the word “three” be substituted.

Note : The salary of the Auditor-General of India as fixed by the Government of India (Audit and Accounts) Order, 1936, is 60,000 rupees per annum. The Drafting Committee suggested that the salary of the President of the Union should be fixed at Rs. 5,500 per mensem and in order to scale down the salaries of other officers proportionately the Committee thought it appropriate to suggest that the salary of the Auditor-General of India should be Rs. 4,000 per mensem. This amendment seeks to reduce it to Rs. 3,000 per mensem. The position of the Auditor-General in this respect should be about the same as that of the Chief Justice of a High Court; whatever salary is fixed for the latter may also be fixed for the former.

AUDITORS-IN-CHIEF FOR THE STATES

ARTICLE 210

Drafting Committee : That in clause (1) of article 210, the words “in his discretion” be omitted.

Note : The Special Committee was of the view that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution.

Drafting Committee : That in clauses (1), (4) and (6) of article 210, the words “for the time being specified in Part I of the First Schedule” be omitted.

Note : The words “for the time being specified in Part I of the First Schedule” in clauses (1), (4) and (6) of article 210 are hardly necessary, as in view of the definition of the expression “State” in article 128, the word “State” used in these clauses can only mean a State for the time being specified in Part I of the First Schedule. The said words may accordingly be omitted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor both the amendments.

ARTICLE 211

Drafting Committee : That in article 211, the words “for the time being specified in part I of the First Schedule” be omitted.

Note : For reasons given in the remarks under article 210 above the

words "for the time being specified in Part I of the First Schedule" may also be omitted from article 211.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

12. *Indian States*

MEMORANDUM ON THE DRAFT CONSTITUTION OF INDIA BY V. T. KRISHNAMACHARI, B. H. ZAIDI, SARDAR SINGHI OF KHETRI AND SARDAR JAIDEV SINGH

1. Procedure for the accession of the Indian States: The Draft Constitution of India expressly provides that "India shall be a Union of States", and the term "State" has been defined to include not only those territories which formerly constituted British India but also the Indian States specified in Part III of the First Schedule. The Draft Constitution does not, however, contain any provision for the acceptance by the States of the Constitution as finally approved by the Constituent Assembly. In this connection, it should be remembered that the Constituent Assembly has full legislative power and authority in respect of the territories which were formerly known as British India, since, under the Indian Independence Act, the British Parliament has completely divested itself of all authority in respect of these territories. But the Constituent Assembly, as such, has no power of framing any constitution for the territories comprised in the Indian States. It has, as the Dominion Legislature, powers in respect of certain specified subjects by virtue of the Instrument of Accession executed by the States. It is, therefore, not clear as to how the Constitution, as finally approved by the Constituent Assembly, will be made binding on the Indian States. In a unitary State the process of constitution-making is simple. There the Constituent Assembly has all powers and authority and it may frame any constitution of any character for the entire State. The technique is, however, somewhat complex where two or more separate and independent States wish to join together to form a new State under a new Constitution. Two different procedures have generally been adopted in such cases. In the first place, the States concerned may conclude an agreement by virtue of which a Constituent Assembly is created with the power to frame a constitution subject to such conditions as may be expressly specified in that agreement. Such, for instance, was the case when the constituent units of the Argentine Republic concluded what is known as "*pacta presistente*" under which a Constituent Assembly was set up to frame the Argentine Constitution. Exactly similar was the case when the first Soviet Constitution of 1924 was established. A Treaty of Amalgamation between the constituent States preceded the establishment of the Constituent Assembly for the purpose of drafting the constitution.

This procedure cannot, however, be adopted in the case of the Indian States, since the Draft Constitution has already been prepared by a committee of the Constituent Assembly.

The alternative is that the Constitution finally approved by the Constituent Assembly should be ratified by the Governments and Legislatures of the States. The Union Constitution Committee set up by the Constituent Assembly appears to endorse this procedure. This is what the committee says :

Under the Act of 1935, accession was to be evidenced by 'Instrument of Accession' executed by the Rulers. If it is considered undesirable to use this term or adopt this procedure, some kind of ratification may have to be prescribed.

This procedure does not, however, preclude the possibility of any of the States seceding from the Indian Union at the instance of its Legislature, since no Legislature can restrict for ever the freedom of action of its successors. What a Legislature has ratified today may be annulled by it tomorrow. The procedure would, therefore, appear to be equally inapplicable if India is to be an "indestructible Union of indestructible States."

It is, therefore, clear that the solution of the problem has to be found in the procedure adopted in the Government of India Act, 1935, i.e., the Indian States should adhere to the Constitution framed by the Constituent Assembly by the execution of an Instrument of Accession, the detailed particulars of which should be set forth in the Constitution itself. We would also suggest that negotiations should be initiated without further delay for the settlement of the terms and conditions of the agreements referred to in articles 225 and 258 of the Draft Constitution.

Further, there is nothing in the Draft Constitution relating to the position of the Rulers of the States. On the other hand, the agreements which have recently been executed by some of the Rulers transferring full power and authority to the Government of India expressly provide that the rights, privileges and dignities of the Rulers are guaranteed by the Dominion Government. A similar provision should, therefore, appear in the Instrument of Accession.

2. Definition of the term 'State' under the Draft Constitution : Under clause (1) of article 1 of the Draft Constitution, India has been described as a "Union of States" irrespective of the fact whether the constituent units are the Governors' Provinces, Chief Commissioners' Provinces or the Indian States, although the distinction between the Provinces and the States has been maintained under clause (2) for certain specific purposes. The term "State" has all along been associated in India with an Indian State where the sovereignty is *de jure* vested in the Ruler. A proper distinction was maintained between the Indian States and the Provinces in the Government of India Act, 1935. The distinction has also been maintained

under the India (Provisional Constitution) Order, 1947. The change now suggested in the Draft Constitution will not only create confusion in the interpretation of the various articles of the Constitution but is also bound to prejudice the special juristic status of the Indian States. It is, therefore, suggested that in view of the traditional polity of the States, their position in the constitutional set-up of India and the fact that the Rulers of the States will continue to be the heads of the States as constitutional monarchs, it would be desirable to maintain in the Constitution distinction between the Indian States and the Provinces by suitable differentiation in nomenclature. Indeed, the term 'Indian State' has been retained in the Draft for certain purposes, as for example, in the designation "Indian State Railway".

3. The territory of India : Clause (3) of article 1 provides that the territory of India shall, *inter alia*, comprise the territories of the States; and this means that it will include the territories of the Provinces as well as of the Indian States. It is not understood why this provision has been found to be necessary. Geographically this is, no doubt, correct but constitutionally it is not. Strictly speaking, the territories of a constituent unit cannot become the territories of the Union of India for all purposes, but can only be considered as part and parcel of the Indian Union for certain specific purposes.

Further, a provision of this nature is not to be found in most of the federal constitutions. For instance, under the American Constitution, a clear distinction is made between the territories of the Union and the territories of the States. The territories of the Union are not States of the Union. They do not possess full powers even of local self-government. They are subject to the exclusive jurisdiction and legislation of Congress. The same position is occupied by the District of Columbia. A similar differentiation has been made in the Constitution Act of the Commonwealth of Australia. Thus, under section 123 of the Act, "the Parliament may make laws for the governance of any territory surrendered by any State to and accepted by the Commonwealth". Under this provision the Northern Territory was surrendered by South Australia to the Commonwealth and became a "Territory of the Commonwealth" (per *Isaacs, J. in Buchanan v. The Commonwealth*, 16 C.L.R. at pages 334-335). The same distinction also exists in the federal constitutions of Argentina, Brazil, Mexico and Venezuela. Similarly the Constitution of the U.S.S.R. speaks of the territory of a Union Republic and not of the territory of the Union (Article 18).

The only exceptions of this general rule are to be found in the now defunct federal constitution of Austria and the Weimar Constitution of Germany. But it should be remembered that in both these cases the federal character of the constitution had been reduced to the vanishing point and that both the States had for all practical purposes become what the German jurists have called "*Einheitsstaat*" or unitary State.

For these reasons it is suggested that clause (3) of article 1 should be deleted.

4. Distribution of legislative powers between the Union and the Indian States : As regards this important subject, the States desire that the following position should be clearly recognized in the Constitution as well as in the Instrument of Accession :

- (i) That the States will retain all subjects and powers other than those expressly ceded to the Union. This position was accepted by the Negotiating Committee appointed by the Constituent Assembly on the 21st December 1946, as the following extract from the committee's report will show:

In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission's statement said : 'That States will retain all subjects and powers other than those ceded to the Union'. That is perfectly clear, we accept that statement, we accept that entirely.

This has been further clarified in Pandit Nehru's letter to the President of the Constituent Assembly forwarding the Report of the Union Powers Committee. Pandit Nehru says:

It is necessary to indicate the position of Indian States in the scheme proposed by us. The States which have joined the Constituent Assembly have done so on the basis of the 16th May Statement. Some of them have expressed themselves as willing to cede wider powers to the Centre than contemplated in the statement. But we consider it necessary to point out that the application to States in general of the federal list of subjects, in so far as it goes beyond the 16th May Statement, should be with their consent. It follows from this that in their case residuary powers would vest within them unless they consent to their vesting in the Centre.

- (ii) That the terms "State List" and "Concurrent List" will not be applicable to the Indian States. The Union Constitution Committee has also recommended that "the States shall be on a par with Provinces as regards the federal legislative list, subject to the consideration of any special matter which may be raised when the lists have been fully prepared".
- (iii) That the adherence of the Indian States to the Union should be in respect of such items of the Union List as are considered to be essential to the greater interests of India as a whole. The criterion for determining the subjects which should be assigned to the Union may be thus summarized in the words of Sir John Quick :

It is submitted that this section of the Constitution is based on the true federal principle, that the present division of power between the Federation and the States is truly Federal. What concerns the whole of Australia should be reserved to the Federal Parliament, and what concerns each

particular part or State of Australia should be reserved to the part or State. There is, therefore, a logical differentiation of power based, not on the difference in commerce itself, but on the operation of commerce. A branch of trade or commerce which begins in a State and ends in a State is reserved to the State, because the State alone is interested in it, but when the course of trade and commerce moves across the boundary, and enters another State, it becomes Federal, because more than one State is interested and it admits of laws of general application. Trade and commerce matters which are internal or domestic, may be fairly left to be dealt with by the State authorities. What concern, for instance, has the State of New South Wales in the internal shop-keeping arrangements of the State of Victoria? (*The Legislative Powers of the Commonwealth and the States of Australia*, page 310).

On this basis, we have no doubt that the States will be prepared to accede to more subjects than are included in the present Instrument of Accession. A supplementary memorandum on this issue will be forwarded at an early date.

(iv) We would also point out that article 227 should be controlled by article 225, as the position is not entirely free from ambiguity. Article 225 uses the words 'notwithstanding anything in this Chapter'. Article 227 contains the expression 'notwithstanding anything in the foregoing provisions of this Chapter'. The use of the words 'notwithstanding anything in the foregoing provisions of this Chapter' in article 227 may render the provisions of article 225 nugatory. It is, therefore, desirable and necessary that article 225 should be entered after 230.

(v) Article 226 is anti-federal in character and does not find place in any federal constitution. We, therefore, suggest that this article should be deleted.

(vi) Article 230 of the Draft Constitution reads as follows :

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any other country or countries.

This is an anti-federal provision, and there is no reason why the Union should be thus allowed to invade the sphere earmarked for the constituent units. The correct position in regard to this matter is contained in section 106(1) of the Government of India Act, 1935, which runs thus :

The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federal State except with the previous consent of the Ruler thereof.

The States urge that this provision should be incorporated in the new Constitution. In this connection reference may be made to the Privy Council decision in *Attorney-General for Canada v. Attorney-General for Ontario and others* (1937 A. C. page 326). In this case, the Privy Council ruled as invalid certain Acts of the Canadian Parliament regulating conditions of labour in various ways, as the legislation related to a Provincial subject, although it was sought to be justified on the ground that it was required to give effect to certain International Conventions which had been ratified by the Dominion of Canada.

The Dominion cannot merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth... It must not be thought that the result of this decision is that Canada is incompetent to legislate in performance of treaty obligations. In totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed and if, in the exercise of her new functions derived from her new international status, Canada incurs obligations, they must, so far as legislation is concerned, when they deal with Provincial classes of subjects, be dealt with by cooperation between the Dominion and the Provinces.

5. Administrative Relations between the Union and the States : Clause (2) of article 234 reads as follows :

The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance.

Such a provision is entirely anti-federal and no such executive power should vest in the Union Government. It is, no doubt, true that a similar provision did exist in the Government of India Act, 1935, but its application was confined entirely to the Provinces. There is no reason why it should now be made applicable to any constituent State of the Indian Union, particularly as powers under items 31 and 32 of the Union List should be adequate and satisfactory.

It is also suggested that the following provisions should be incorporated in the Constitution:

- (i) That in the exercise of the executive authority of the Union in any State regard shall be had to the interests of that State. Similar provision is to be found in the Government of India Act, 1935, which was applicable to the Provinces as well as the States. There is no reason why it should not be repeated in the new Constitution. In this connection, attention is invited to the marginal note to article 233 which speaks of the 'obligation of States and the Union': but there is no substantive provision relating to the obligation of the Union in this matter.

- (ii) That it should be possible for any constituent unit so desiring to conclude agreements with the Union Government for the exercise by that unit of functions in relation to the administration of any law of the Union Legislature which applies therein. The Government of India Act, 1935, as well as the India (Provisional Constitution) Order, 1947, provided for such agreements with the Indian States. Similar provisions are to be found in the federal constitutions of Switzerland, the German Reich of 1919, and the Republic of Austria of 1929.

6. Provision relating to the Judiciary : Clause (1) of article 100 provides that no discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge. Clause (2) is so worded as to permit motions for removal of judges of High Courts in States. This cannot have been intended. We suggest the deletion of this clause.

Clause (i) of the proviso to article 109, in effect, abrogates the general provisions of article 109 as stated in clauses (a), (b) and (c). A judicial pronouncement by the Supreme Court of India on any dispute even though it is covered by any treaty, agreement, engagement, *sanad* or other similar instrument entered into or executed before the date of the commencement of the Constitution is more appropriate and honourable. The States, therefore, suggest that irrespective of any provision to the contrary provided in any such treaty, agreement etc., every dispute arising out of such treaty, agreement etc., should be cognizable by the Supreme Court of India. This will involve the deletion of clause (i) of the proviso to article 109 and the consequential omission of clause (2) of article 119.

Article 117 of the Draft Constitution provides that "the law declared by the Supreme Court shall be binding on all courts within the territory of India". The territory of India will also include the Indian States, and presumably, this article is intended to be applicable to the Indian States. There is, however, no justification for extending the application of this provision. The courts of an Indian State might consider it proper and reasonable on grounds of justice, equity and good conscience to accept the law declared by the Supreme Court, but strictly speaking, the courts of an Indian State cannot be saddled with a statutory obligation to follow the law declared by the Supreme Court in respect of such matters as are not within the jurisdiction of the Indian Union in regard to an Indian State. This principle has been recognized in section 212 of the Government of India Act, 1935, adapted by the India (Provisional Constitution) Order, 1947. Therefore, article 117 of the Draft should accordingly be amended.

Clause (1) of article 238 provides that "full faith and credit shall be given throughout the territory of India to public acts, records and judicial

proceedings of the Union and of every State." Clause (3) of this article further provides:

Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

The proviso to this article, however, lays down that this article will only be applicable to an Indian State if it has conceded to the Union the power to make laws with respect to criminal procedure, civil procedure and the law of evidence, etc. This proviso is totally unjustifiable. In the first place, it directly contradicts the practice under which the public acts and records of an Indian State were recognized in British India provided they were duly authenticated. Secondly, the restriction which the Draft Constitution proposes to impose on the authority of an Indian State is without any precedent in any federal constitution. For instance, section 118 of the Australian Constitution provides that "full faith and credit shall be given throughout the Commonwealth to the laws, public acts and records, and the judicial proceedings of every State", although the Commonwealth Parliament has no power to make laws in respect of criminal procedure, civil procedure or the law of evidence. Similarly, under the Constitution of the United States of America, "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State", although criminal procedure, civil procedure and the law of evidence are not within the jurisdiction of the Federal Government.

7. Emergency Powers of the Union Government : Part XI of the Draft Constitution contains provisions relating to the exercise of certain powers by the President of the Union during a period of emergency. All these powers are of an extraordinary nature. Some of them also militate against the fundamental principle of federalism and do not find any parallel whatsoever in any other federal constitution. For instance, the Constitution of the United States does not contain any such provision. It restricts itself to recognizing in indirect terms the possibility of adopting exceptional measures by declaring when the writ of *Habeas Corpus* shall not be suspended—"unless when in cases of rebellion or invasion the public safety might require it". The reason for this attitude has been thus explained by the U.S. Supreme Court in *Ex-parte Milligan* :

The Constitution of the United States is a law for rulers and people equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism; but the theory of necessity on which it is based is false, for the Government, within the constitution, has all the powers granted to it which are necessary to preserve its existence.

The same argument could legitimately be advanced in the case of India. It may, however, be pointed out that the prototype of the plan embodied in the Draft Constitution is to be found in the system of *etat de siege* which obtains in France. The system of *estado de sitio* incorporated in the federal constitution of the Latin American States is also modelled on the French pattern. These examples do not, however, lend support to the provision contained in the Draft Constitution, since there are striking differences between the two systems as noted below :

- (i) The Draft Constitution empowers the President of the Union to declare a state of emergency, and such a declaration remains in force for a period of six months unless it is extended by a resolution of both Houses of Parliament. In France, on the other hand, a state of emergency can only be declared by the Legislature by virtue of a special law enacted for the purpose. If the Legislature is not in session, the President may declare a state of emergency, but he is bound to convene the Legislature within a period of two days. In Mexico, *estado de sitio* can be declared by the President but only with the concurrence of the Legislature or of the Standing Commission when the Legislature is not in session. In Brazil, the Constitution clearly states that the authority competent to declare "the state of siege" is the National Congress, the executive exercising the emergency powers only in case the Congress is not in session.
- (ii) Under the provisions of the Draft Constitution the Proclamation of Emergency may cover the whole of India. This is not the case in other constitutions. In France, for instance, the Proclamation must specify the department or *arrondissement* to which it is intended to apply. Similarly, under the Federal Constitutions of the Latin American States a declaration of "the state of siege" for the whole country is not warranted.
- (iii) The Draft Constitution authorizes the President of the Union to suspend the constitutional guarantees. No such power can be exercised under the system obtaining in France as there the people continue to enjoy their fundamental rights in spite of the declaration of *etat de siege*.
- (iv) Under the Draft Constitution, the Union Government may invade the sphere of executive authority assigned to a component State. Such a provision does not exist in any other constitution.
- (v) The Draft Constitution makes it quite clear that the President may suspend the operation of the financial settlement contained in the Constitution. This has no parallel in any other federal constitution.

It may be conceded that in the event of war or threat of war, it may become imperatively necessary to vest extraordinary powers in the Union Government, although it is quite clear that adequate and satisfactory powers can be claimed by the Union Government under the items relating to

defence in the Union List as well as under item 77 of the same list. There is, however, no justification for claiming such powers in the event of domestic violence, particularly as under the Constitution the Governors of the States will have adequate authority to deal with any situation of emergency and, presumably, the Rulers of Indian States will have similar powers. If, however, it is deemed necessary to retain these provisions, the following amendments should be made :

- (i) The Proclamation of Emergency should apply only to those constituent States or parts of States which are directly threatened by war or domestic violence.
- (ii) The proclamation should be applicable to a constituent State threatened by war or domestic violence only when the Government of the State asks for such proclamation or has totally failed to cope with the situation.
- (iii) The issue of directions under article 276 (a) should be confined to the States which have been threatened by war or domestic violence.
- (iv) There is no justification for article 277, and the President of the Union Government should have no authority under the Constitution to suspend the operation of the financial settlement embodied in the Constitution.

The provisions contained in the Draft Constitution deal only with the rights and powers of the Union in the event of grave emergency. There is no reference anywhere in the Draft to the obligations which necessarily devolve on the Union Government in such cases. For instance, all federal constitutions expressly and specifically provide that it is the duty of the central government to protect every component state against external aggression or domestic violence. Section 119 of the Australian Constitution Act imposes on the Commonwealth the duty to protect every State against invasion and, on the application of the executive government of the State, to protect every State against domestic violence. Section 51 of the Australian Defence Act, therefore, provides :

Where the Governor of a State has proclaimed that domestic violence exists therein, the Governor-General, upon the application of the Executive Government of the State, may, by proclamation, declare that domestic violence exists in that State, and may call out the Permanent Forces, and in the event of their numbers being insufficient may also call out such of their Militia and Volunteer Forces, as may be necessary for the protection of that State, and the services of the Forces so called out may be utilized for the protection of that State against domestic violence.

A similar provision, almost in the same words, is to be found in the Constitution of the United States. Under the Swiss Constitution, the authorities of a Canton are entitled to ask for aid not only from the Federal Government but also from other Cantons in case of sudden danger of foreign attack. The authorities of the Cantons have similar rights in the

case of internal disturbance or if danger is threatened by another Canton. The Constitution of the Argentine Republic provides that the Federal Government have the right to intervene in the territory of the units to repel external invasions and, upon the requisition of their constituted authorities, to support or re-establish them if they have been displaced by an insurrection or by invasion from another Province.

Similar provisions exist in other federal constitutions.

It is, therefore, suggested that there should be a specific clause in the Constitution on the following lines :

It shall be the duty of the Union to protect every State against external aggression and upon a request from the Executive Government of a State to protect or restore the duly constituted authorities of that State in the event of domestic violence or insurrection.

8. Financial relations between the Union and the constituent States :
Article 258 of the Draft Constitution authorizes the Union to conclude agreements with the Indian States with regard to the levy, collection and distribution of taxes and duties. The article runs thus :

(1) Notwithstanding anything contained in this chapter, the Union may, subject to the provisions of clause (2) of this article, enter into an agreement with a State for the time being specified in Part III of the First Schedule with respect to the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this chapter and, when an agreement is so entered into, the provisions of the chapter shall in relation to such State have effect subject to the terms of such agreement.

(2) An agreement entered into under clause (1) of this article shall continue in force for a period not exceeding ten years from the commencement of this Constitution :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission he thinks it necessary to do so.

These provisions are not, however, in consonance with the recommendations made in this behalf by the Union Powers Committee appointed by the Constituent Assembly. The committee made the following recommendations :

We realize that in the matter of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We recommend that uniformity of taxation throughout the units may, for an agreed period of years after the establishment of the Union not exceeding fifteen, be kept in abeyance and the incidences, levy, realization and apportionment of the above taxes

in the State units shall be subject to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation.

It is clear that the provisions of the Draft Constitution depart from these recommendations on several points. In the first place, the maximum period for the currency of the agreement has been reduced from fifteen to ten years. There is, however, no reason why the duration of the agreements in question should be curtailed. Secondly, the proviso to this article authorizes the President of the Union to terminate or modify any such agreement if, after consideration of the report of the Finance Commission, he thinks it necessary to do so. This appears to be an extremely unfair provision. Besides, it is contrary to the very nature of an agreement that one of the parties should be allowed to terminate it without the concurrence of the other party.

For these reasons, the States would strongly urge that article 258 of the Draft Constitution should be so amended as to incorporate *in toto* the recommendations made by the Union Powers Committee.

Article 266 of the Draft Constitution provides that the Government of a State shall not be liable to Union taxation in respect of lands or buildings within the territory of India, or income accruing, arising or received within such territory. This exemption does not cover any income arising in respect of trade or business or any operations connected therewith. There is, however, no reason why income arising from the public utility undertakings of any constituent unit should be liable to central taxation. Nor is there any justification for taxing any income arising or accruing from trade or business carried on by a constituent unit within its own territory. We would, therefore, urge that article 266 should be amended accordingly.

Article 16 defines the fundamental right regarding freedom of trade, commerce and intercourse throughout the Union, subject, however, to certain exceptions in this behalf as specified in article 244. In this connection, reference may be made to paragraph 5 of the Interim Report submitted by the Advisory Committee on Fundamental Rights, which may be quoted here *in extenso*:

Clause 10 deals with the freedom, throughout the Union, of trade, commerce and intercourse between the citizens. In dealing with this clause we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenue and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States, in the light of their existing rights, with a view to giving them time, upto a maximum period to be prescribed by the Constitution, by which internal customs could be eliminated and complete free trade established within the Union.

Articles 16 and 244 are not in consonance with the letter and spirit of the observations made in the paragraph cited above in so far as these relate to the levy of internal customs by some of the Indian States. The States would, therefore, urge that article 244 may be amended accordingly.

9. Other Provisions of the Draft Constitution—(i) Citizenship : Part II of the Draft deals with the question of citizenship. Under article 6 of this Part, Parliament may by law make further provision regarding the acquisition and termination of citizenship and all other matters relating thereto. Under the Seventh Schedule, 'citizenship' falls within the exclusive jurisdiction of the Union. It would, therefore, follow that as soon as a law relating to citizenship has been passed by the Union Parliament, the local laws of nationality in force in the Indian States would cease to be operative. But one of the salient features of every federal system is the principle of double citizenship. There are in every federal constitution a government of the federation and a government of each of the component States. Each of these governments is distinct from the other, and each has citizens of its own, who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the federation and a citizen of a State. But his rights of citizenship in one of these governments will be different from those which belong to him under the other. The Supreme Court of the United States has thus clarified the position :

The distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within a State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual. (*United States v. Cruikshank*, 92 U. S. 542.)

It is, therefore, suggested that a proviso should be added to article 6 of the Draft preserving the right of the Legislature of a constituent State to deal with the question of citizenship for the local purpose of the State.

(ii) Fundamental Rights : Part III of the Draft Constitution deals with fundamental rights, and it has been expressly made applicable to the Indian States. The following provisions in this Part require special consideration from the point of view of States :

(a) Clause (1) of article 12 provides that no title should be conferred by the State. The provisions of this clause are, however, inconsistent with the provisions of clause 7 recommended by the Advisory Committee on

Fundamental Rights which says that no heritable title shall be conferred by the Union. There is no reason why the Rulers of Indian States should be deprived of their prerogative to confer titles on their subjects. We would, therefore, suggest that article 12 should be amended suitably in the light of the provisions of the clause recommended by the Advisory Committee.

(b) Clause (1) of article 25 guarantees the right to move the Supreme Court of India by appropriate proceedings for the enforcement of the fundamental rights. This means that the jurisdiction of the courts of the Indian States will be entirely ousted in respect of this matter. There does not appear to be any substantial reason behind this proposal. It would be more appropriate if article 25 were amended to provide that in respect of an Indian State the highest judicial tribunal in that State should in the first instance be moved for the enforcement of any fundamental rights and that the jurisdiction of the Supreme Court of India should be invoked by an aggrieved person by way of revision or appeal. This amendment is all the more necessary in view of the provisions of article 280 of the Draft Constitution. This article provides for the suspension of the enforcement of fundamental rights under article 25 where a Proclamation of Emergency is in operation. This article does not, however, relate to the suspension of the enforcement of fundamental rights in respect of an Indian State. In these circumstances, an extremely serious situation may arise where the Ruler of a State may, in the event of emergency, suspend the enforcement of fundamental rights but the Supreme Court of India would still be competent to hear a petition in this behalf, as the order of the Ruler of the State will not be binding on the Supreme Court. The same view has been taken by the *ad hoc* committee of the Constituent Assembly which was appointed to consider the constitution and powers of the Supreme Court. This is what it said :

Clause 22 of the draft of the fundamental rights provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think, however, that it is undesirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only court from which he can obtain redress. Where there is no other court with the necessary jurisdiction, the Supreme Court should have it ; where there is some other court with the necessary jurisdiction, the Supreme Court shall have appellate jurisdiction, including powers of revision.

(iii) **Prerogative of pardon, etc. :** Sub-clause (c) of clause (1) of article 59 provides that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence in all cases where the

sentence is a sentence of death. It is, no doubt, provided in clause (3) of the same article that the provisions of the aforementioned sub-clause (c) shall not affect the power to suspend, remit or commute a sentence of death exercisable by the Ruler of an Indian State under any law for the time being in force. But this clause does not override the right of a convict to prefer an appeal or revision against the order of the Ruler to the President who may then even rescind such order. This right flows from the aforementioned provisions of article 59 as they stand now. At present the power referred to in sub-clause (c) of clause (1) of article 59 vests exclusively in the Ruler of an Indian State and this is, in fact, a prerogative inherently vesting in him. We, therefore, suggest that finality should be attached to an order passed by the Ruler in any such case and sub-clause (c) of clause (1) and clause (3) of article 59 should be suitably amended so as to confine their operation to the Governors' Provinces and the Chief Commissioners' Provinces only.

(iv) Election of the President of the Union : According to article 67(1) and (2), the Council of States is to consist of two hundred and fifty members of whom fifteen members having special knowledge or practical experience in respect of certain specified matters, are to be nominated by the President. Article 43 provides that the President shall be elected by the members of an electoral college consisting of (a) *the members* of both Houses of Parliament, and (b) *the elected members* of the Legislatures of the States. Thus although under sub-clause (a) the elected as well as the nominated members of the Council of States will be the members of the electoral college to be constituted for electing the President, so far as the State Legislatures are concerned, their elected members only will be members of that college under sub-clause (b). This is an invidious distinction between the nominated members of the Council of States and the nominated members of the State Legislature for which there is no justification. We, therefore, suggest that the word "elected" occurring in clause (b) of article 43 should be deleted.

(v) Allocation of seats in the Union Parliament : It has not been expressly stated in the Draft Constitution as to what criterion or principle shall be adopted in allocating seats in the Council of States to the various units forming the Union. It is, therefore, suggested that such criterion or principle should be definitely specified in article 67 of the Constitution itself.

In view of the general principle enunciated in sub-clause (b) of clause (5) of article 67 according to which seats in the House of the People are to be allocated to the various units forming the Union, the proviso to this sub-clause appears to be redundant. We would, therefore, suggest that this proviso should be deleted.

(vi) Amendment of the Constitution : The proviso to clause (1) of article 304 lays down that an amendment in the Constitution of the nature referred

to in its sub-clause (a), (b) or (c) shall not be made unless it is ratified by the Legislatures of not less than one-half of the Governors' Provinces and the Legislatures of not less than one-third of the Indian States. There is no justification for any distinction in this matter between the Legislatures of the Governors' Provinces and the Legislatures of the Indian States. We, therefore, suggest that the proviso should be suitably amended so as to treat the Legislatures of the Governors' Provinces and the Legislatures of the Indian States at par: in other words "one-half" shall be substituted for "one-third".

SUPPLEMENTARY MEMORANDUM

In our previous memorandum we have stated what we consider to be the principal criterion for determining the subjects which the States should assign to the Union. The underlying principle of our recommendation is: what concerns the whole of India should be ceded to the Union Parliament and what concerns each particular part or State should be reserved to the part or State. On this basis we feel that the States would be prepared to accede in respect of a large number of the items included in the Union List, subject to the following observations:

1. *Item 4*: The words "the strength, organization and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule" should be substituted by the following: "the strength of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule and the organization and control of such part of these forces as may by agreement be earmarked for service with the Union Forces".

2. *Item 7*: The following words should be added at the end of this item: "in the States for the time being specified in Parts I and II of the First Schedule, and the administration of cantonments in States for the time being specified in Part III of the First Schedule".

3. *Item 11*: The words "and trade" after the word "consular" should be deleted.

4. *Items 13 and 14*: The following should be added at the end of each item: "Provided that the Union shall not by reason only of this entry have power to implement such decisions for a State for the time being specified in Part III of the First Schedule except with the previous consent of the State".

5. *Item 19*: The following shall be added at the end: "Provided that the Legislature of a State for the time being specified in Part III of the First Schedule shall be competent to make laws regulating citizenship for the purposes of the State".

6. *Item 47*: This item should be redrafted as follows: "Banking, that is to say, the conduct of banking business by corporations other than

corporations owned or controlled by the Government of a constituent State and carrying on business only within that State".

7. *Item 49*: The following words should be added: "other than State Insurance".

8. *Item 74*: This item should be redrafted as follows: "Development of inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power to the extent to which development under the control of the Union is declared by Parliament by law to be expedient in the public interest".

9. *Item 78*: The words "or the Government of any State" should be deleted.

10. *Item 79*: The words "and taxes other than stamp duties on transactions therein" should be deleted.

11. *Item 91*: This item should not be applicable to an Indian State.

Note by Alladi Krishnaswami Ayyar on Indian States: Owing largely to the uncertain and nebulous attitude of the Indian States, the Drafting Committee may not have bestowed sufficient care in dealing with the provisions of Part IV *vis-a-vis* the Indian States. I am sending this short note containing my comments on the articles with suggested changes; I have also gone through the note sent by V. T. Krishnamachari and others in regard to the Indian States.

Under article 216, Parliament has the power to make laws for the entire territory of India subject to the provisions of the Constitution. Article 217 reproduces in effect the terms of section 100 of the Government of India Act, 1935. Clause (1) as drafted will apply to every kind of State including States in Part III. This taken along with item 91 of the Union List would mean that even the residuary power would vest in the Centre subject only to the specific agreement provided for in article 225. Sub-clause (2) of article 216 and sub-clause (3) apply only to States in Part I. Articles 226, 227, 228 and 230 are in terms applicable to all the three kinds of States. Article 225 as already observed is drafted on the basis that all the previous provisions are applicable to States in Group III with a power of contracting out between the Government of India and the States concerned. To remove this anomaly, there are only three courses open:

- (1) to make every article applicable including the article relating to residuary power with a power to contract out;
- (2) to make appropriate changes in article 217 by making clause (1) applicable to all States and at the same time omitting the reference to residue in the list and adding a proviso in regard to taxation to the effect that the items bearing upon taxation are subject to a ten years' agreement; and
- (3) by providing that clause (2) would apply to States in Part III only if there is any agreement covering the items in Part II and clause (3) only to States in Part I.

The other provisions excepting the article dealing with residuary power would apply to all the States.

I do not think there is any need for any fresh instrument of accession or ratification to make this Constitution effective throughout the territory of India. The nominees of State Rulers and of the people of the States are represented in the Constituent Assembly. They are just in the same position as the representatives of the Provinces taking part in the decisions of the Constituent Assembly. There is no provision for accession in any Constitution I am aware of.

There is no substance in the objection that the territory of the Indian States is not part of the territory of the Union. The territory of the Commonwealth in Australia corresponds somewhat to clauses (b) and (c). The differences in the extent of power which is wielded by the Union in different areas do not determine the question whether it is part of the Union territory or not.

In regard to the juxtaposition of articles 225 to 230, they are arranged in proper order. It was the intention of the Drafting Committee that article 225 should be subject to the provisions of articles 226, 227 and 230. There is no ambiguity to be resolved. What is wanted by V. T. Krishnamachari is evidently a change and not a classification.

With regard to article 230, the matter was fully discussed in the Assembly itself when the Union List came up for consideration and was passed by an overwhelming majority. Besides, whatever might be said with regard to a mere convention or agreement, a treaty must stand on a different footing. The reference to the Canadian decision is misleading. There is a strong feeling in Canada that the decision in the Labour case is not correct and that there is no reason for departing from the principle enunciated in the Aeronautics case, 1932 A.C. 54 and the Radio Broadcasting case, 1932 A.C. 304.

In regard to the administration of Union laws, we have proceeded on the footing that the executive and legislative authority must be co-extensive and this principle has been accepted by the Assembly by an overwhelming majority.

With regard to the jurisdiction of the Supreme Court regarding interpretation of pre-Constitution treaties, the Drafting Committee after prolonged deliberations reached the conclusion now embodied in article 109 as they were not for ripping open State claims.

Emergency powers of the Union Government: A constitution like that of the United States framed in the 18th century can afford no parallel to that which ought to be adopted by a country like ours in these days of emergencies and crises.

Article 266: There is no reason why States and Provinces should not stand on the same footing as regards tax exemption. Similarly article 244.

Right to move the Supreme Court : The State Court is not superseded ; only the right is concurrent. Most probably, by rules of the Supreme Court, they would insist on the local court being moved first before they are troubled; cf. the practice regarding bail applications and transfer applications powers in regard to which are possessed both by the district and sessions judge and the High Court.

13. Centrally Administered Areas (Chief Commissioners' Provinces)

ARTICLE 212

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That for article 212, the provisions of the Report of the *ad hoc* Committee on Chief Commissioners' Provinces be substituted.

Note : The Special Committee has also considered the point raised in this amendment and has expressed the view that alternative provisions for the administration of the present centrally administered areas should be prepared on the basis of the report of the *ad hoc* Committee on the Chief Commissioners' Provinces, and it should be left to the Constituent Assembly to decide which set of provisions should be retained in the Constitution. To give effect to the suggestion of the Special Committee, alternative provisions (with the necessary consequential changes in other parts of the Draft) have been prepared separately [See p. 242 *infra*]. The observations contained in paragraph 13 of the letter of the Chairman of the Drafting Committee to the President of the Constituent Assembly* may be read in this connection.

L. N. Sahu : That in clause (2) of article 212, for the words "specified in Part II of the First Schedule" the words "part of the Governors' Provinces in Part I of the First Schedule" be substituted.

Note : The modifications already suggested in clause (2) of article 212 (See p. 241 *infra*) will meet the point raised in this amendment. This amendment is not therefore necessary.

The members of the Seraikela State Legislature want the present scheme under which most of the Eastern States have been integrated with Orissa, to be changed, and a Union of States established in its place.

Note : We have received similar representations from others also, but this is a matter which is at present the concern of the States Ministry, and the Drafting Committee can hardly take a hand in it just now. Seraikela with Kharasawan has been integrated with Bihar recently in accordance with an award given by the States Ministry.

*See Vol. III, Doc. No. 6, pp. 513-5.

MEMORANDUM FROM THE GOVERNMENT OF ORISSA ON ARTICLE 212

The Government of Orissa have since subjected the matter to a closer examination and are confirmed in their view that the plan of administration of the Orissa group of States formulated by the Drafting Committee is wholly unsatisfactory and would probably be completely unacceptable to all parties concerned. In essence the plan is that those States which have ceded their full and exclusive authority, jurisdiction and powers to the Government of India will under the new Constitution be administered on the same lines as centrally administered areas. Article 212(1) of the Draft Constitution provides that the areas which are now centrally administered will in future be administered through a Chief Commissioner or a Lieutenant-Governor to be appointed for the purpose by the Central Government or through the Governor of a neighbouring Province or the Ruler of a neighbouring State. The proviso to article 212(1) makes it clear that the Central Government can entrust the administration of a centrally administered area to the Governor of a neighbouring Province or the Ruler of a neighbouring State if two conditions are fulfilled; viz.,

(i) the Governor or the Ruler concerned agrees to take over its administration; and

(ii) the people of the centrally administered area also agree that the Governor or the Ruler concerned should take over its administration.

2. If the above scheme of administration is applied to the States which have ceded their jurisdiction, authority and powers to the Government of India, the following consequences will clearly ensue:

(a) All States which have acceded to the Indian Dominion and which have thereafter ceded their jurisdiction to the Government of India will for ever retain their territorial integrity and individual political entity including such small States as Athgarh and Tigiria. All these Orissa States will in due course presumably be mentioned individually under division B of Part III of the First Schedule to the Draft Constitution. Unlike the United State of Kathiawar, Orissa States have not effected any recognized merger among themselves to form a larger unit; and each of them has separately and individually ceded its authority, jurisdiction and powers to the Government of India. Presumably therefore each of them will be specifically and individually mentioned under division B of Part III of the First Schedule and will for all time to come retain its individual political entity. The Provincial Government are not sure that it is still possible for the Ministry of States to bring about a union of some sort of all the 25 Orissa States, which have ceded their jurisdiction, prior to the inauguration of the new Constitution. In case such union is possible and is effected, the United States of Orissa will form one political unit just as the United State of Kathiawar. Individual States will then lose their

separate political entity, and the whole area covered by the 25 States will be administered as a single centrally administered area.

(b) The question whether any of the Orissa States which has ceded jurisdiction will be administered by the Governor of Orissa on behalf of the Central Government, as a centrally administered area, will be determined in accordance with the wishes of the Governor (who would presumably be advised in this matter by his Ministers) and the wishes of the people of the State concerned. Unless both the parties are agreed that the Governor of Orissa should administer the State, it will have to be administered through a Chief Commissioner or a Lieutenant-Governor to be appointed by the Central Government or alternatively (if this is acceptable to the parties concerned) by the Ruler of a neighbouring State, such as Mayurbhanj who has not ceded his authority and jurisdiction to the Government of India. If a union of all the 25 States is formed, it would not be necessary to ascertain the wishes of the people of each individual State; but it will be necessary to ascertain the wishes of the people of all the 25 States collectively as all of them will form one political unit, that is, a 'State' as defined in the new Constitution.

(c) Assuming that the Governor of Orissa is by common consent entrusted with the administration of the Orissa States, the Governor will administer them as an agent of the Central Government. It is not very clear whether in this event—

(i) the Governor will administer the area independently of his Provincial Ministers and will, for its satisfactory and efficient administration be responsible to the Dominion Government and through them to the Dominion Legislature; or

(ii) the Governor will, while administering such an area, be advised by his Ministers, but the Ministry will be responsible not to the Provincial Legislature but to the Dominion Government and through them to the Dominion Legislature.

In either case, however, the States will remain a centrally administered area; in fact, each State will be a separate centrally administered area, unless there is a union of all the States before the new Constitution is finally enacted.

(d) The provisions of article 213 of the Draft Constitution will apply by virtue of clause (2) of article 212 to each Orissa State, or if there is a prior union of the States, then to the larger unit. The creation of a local Legislature and/or a Council of Advisers will, however, be permissible only if the States are administered through a Chief Commissioner or a Lieutenant-Governor. If their administration is by common consent entrusted to the Governor of Orissa, it will not be possible to create or continue any local legislative bodies or advisory councils. The legislature for the States will then obviously

be the Central Legislature. Whether legislative authority can be, and if so will be, delegated to the Governor is by no means certain.

(e) It follows from what has been explained in the preceding sub-paragraph that in case the Governor of Orissa is entrusted with the administration of the States, it will not be possible to continue even the present system of administration, which the Provincial Government have devised in exercise of the powers and authority delegated to them under the Extra-Provincial Jurisdiction Act. That Act will have to be adapted to fit in with the new Constitution Act, and as far as the Provincial Government can judge, it will not be possible to take power in the adapted Act to modify in any way the constitutional scheme as envisaged in article 212(2), in regard to the States coming within the purview of that article. If indeed the scope of the adapted Act is restricted to jurisdiction outside the States as defined in the Draft Constitution (there will be no administrative units known as Provinces), then the Act will apply only to areas which are at present not included in either the Provinces or the Indian States. This means that it will not be possible to associate popular opinion in any manner with the Governor's administration of the Orissa States, and it will be impossible to continue the local advisory committees or the State Assembly or the Executive Council, which the Provincial Government have set up to aid and advise them in the day to day administration of the States.

(f) The Provincial Government have no doubt that if the wishes of the people were ascertained with reference to the constitutional scheme visualized by the Drafting Committee, they would almost to a man vote against any suggestion that the administration of the States should be conducted through the Governor of Orissa. This is only natural, because were the States to be administered through the Governor of Orissa, the people of the States would be completely deprived of any kind of participation in the task of administration, in other words, of even a modicum of self government. Actually it seems to the Provincial Government that the alternative of administration of a "ceded" State through the Governor of a neighbouring Province or the Ruler of a neighbouring State is intended to apply to isolated small and undeveloped States which are not yet fit for local autonomy in any form and in respect of which the question of associating popular opinion with its administration is of no importance. For a group of partially developed States like the Orissa States, which cover a large contiguous area and have a considerable population, of which the more advanced section are definitely politically conscious and keen on full participation in the task of local administration, the alternative which would have obviously to be adopted is governance through a Lieutenant-Governor or a Chief Commissioner.

(g) Assuming that the States will be administered through a Chief Commissioner or a Lieutenant-Governor and not through the Governor of Orissa, the constitutional scheme proposed by the Drafting Committee implies that the Chief Executive may or may not have a local Legislature and/or a Council of Advisers. It is unthinkable that each of these Orissa States including the smallest ones should have a separate Legislature and a separate advisory council. Even assuming, however, that they are formed into a union prior to the inauguration of the new Constitution and are then given a common local Legislature as well as an advisory council under a Lieutenant-Governor or a Chief Commissioner, the type of local autonomy which they will enjoy will naturally be very limited and fall far short of "provincial autonomy".

3. If the implications of the constitutional set-up proposed for the States, which have ceded their authority and jurisdiction to the Central Government, have been correctly appreciated in the preceding paragraph, the broad position appears to be as follows. In no circumstances would the people of the States enjoy full control over "provincial" affairs. They will have a limited voice in the governance of their territory if the Central Government decide to conduct their administration through a Lieutenant-Governor or a Chief Commissioner. On the other hand, they will not have even this limited voice if by their consent the administration is entrusted to the Governor of Orissa. Even if the impossible happens and under these conditions the people of the States vote for their governance through the Governor of Orissa, the Legislature of Orissa will have no concern with the administration of the States, nor will it include elected representatives of the people of the States. The Legislative authority for the States will be the Union Parliament, and the executive authority will be the Governor acting either in his discretion or on the advice of his Ministers, in either case, however, the Governor being responsible to the Union Executive and through them to the Union Parliament. In the absence of political integration, it will be impossible to secure administrative integration, even given all goodwill and mutual understanding. If there are 25 local Governments in 25 States, administrative integration will depend on the wishes of the 25 Governments. Even if they all agree, there will be almost insuperable practical difficulties arising largely from the fact that the administrative personnel must be under one master and not under 25 partly autonomous Governments and one fully autonomous Government or even one fully autonomous Government and one partly autonomous Government. It is impossible to visualize a common secretariat for a fully autonomous and responsible administration and a partly autonomous and partially responsible administration, the political chiefs of the two administrations being altogether different personalities. It is obvious also that it will not be possible to constitute common services for the States and the Province; eternal differences would crop up with regard to

disciplinary control, postings, promotions, etc., and even common heads of departments will not be feasible. In brief, Orissa will for ever remain apart from the Orissa States.

4. The Provincial Government venture to suggest that the scheme visualized by the Drafting Committee of the Constituent Assembly is impracticable, if what is proposed is separate administration of each State as a centrally administered area. At best it will mean perpetuation of all the administrative drawbacks and evils attendant on the old regime which, the Provincial Government had hoped, were gone for good. The scheme may be feasible if a union of the 25 States is constituted to form a larger political and administrative unit; but it would still be open to the grave objections to which this Government drew attention in their memorandum on the constitutional future of Orissa States which was submitted to the States Ministry in the middle of December last. As they fully explained there, the only satisfactory constitutional solution so far as the Orissa States are concerned is their complete merger and unification with the Province of Orissa and that none of the other possible solutions, such as (a) constitution of a separate province, (b) constitution of a sub-province or (c) partial integration with Orissa, is either expedient or feasible. Almost all the objections which the Provincial Government then urged against these alternative solutions applies equally well to the plan of central administration formulated by the Drafting Committee because the plan essentially involves the creation of a separate province or a sub-province or, perhaps, several separate provinces or sub-provinces. The Provincial Government do not wish to reiterate in detail all those objections (for a proper appreciation of which they must refer to their previous memorandum of December 1947), but briefly the main drawbacks are:

- (a) The proposed scheme would deny provincial autonomy to half of natural Orissa for which the Provincial Government can see no justification whatsoever.
- (b) The implementation of the Drafting Committee's scheme would involve the consequence that the unnatural division of Orissa, mainly for historical reasons, into several administrative units will be perpetuated and the right of all Oriya-speaking people to form a single autonomous unit of India will be deliberately denied. If this consequence ensues, the National Government of Independent India will do the greatest disservice and the gravest wrong to the Oriya people. The scheme proposed will in short perpetuate the criminal dismemberment of Orissa, frustrate any hope of building up a strong, stable, prosperous and racially and linguistically homogeneous province and condemn Orissa to remain for ever an insignificant unit of the Union of India. Whatever may be the position elsewhere in India, in Orissa there cannot be the slightest doubt that all these Orissa States owe their origin as separate administrative units to mere fortuitous circumstances in comparatively recent times. The history of

Garhjat and Moghalbandi is well-known. These States are in every way, historically, ethnologically and culturally, inseparable parts of the old Utkal. It will be lamentable if in the new Constitution all these States, mostly petty ones, are entered, as it is proposed that they should be entered, in Part III of the First Schedule as separate entities. As the Provincial Government pointed out in their previous memorandum, "Orissa and Orissa States are parts of one greater whole indissolubly linked by natural and traditional ties of trade and commerce and social and cultural intercourse. They are convinced that neither part can prosper unless the other does."

- (c) Unless the States are included in the Province, the Provincial administration would never be either efficient or even satisfactory, as all administrative problems are common to the States and the Province on account of their relative geographical situation, economic interdependence and other factors.
- (d) The States will be unable to pay their way and will be for ever a drag on the rest of the country and their own chances of development will be remote. As was pointed out in the memorandum submitted by the Provincial Government in December last "the total revenue of all the States is just over Rs. 1 crore including revenue from Central sources of income. If revenue from the Central sources is omitted and if generous allowances are made for the Rulers' privy purses, the net revenue that will be left will be entirely inadequate for the bare needs of a provincial administration; and certainly nothing at all will be left for development of the new Province."
- (e) Finally, there is really no need and no justification for setting up the States as a separate administrative unit and thereby adding to the overhead cost of provincial administration in India. It is not the case that the States form a distinct racial or linguistic area apart from the Province. Both in Orissa Province and in the Orissa States Oriya is the common language barring a number of aboriginal dialects in both parts, and the people are Oriyas except the aboriginals who exist, though in a varying degree, both in the Orissa Province and in the Orissa States.

5. Even if it be assumed that article 213 of the Draft Constitution will be suitably amended so as to permit the creation of a local Legislature and/or a Council of Advisers in respect of "ceded" States the administration of which is by the consent of their people entrusted to the Governor of a neighbouring Province, the objections which have been urged in the two preceding paragraphs would still substantially remain. If no union of the States is formed, the Central Government may set up for each State either a local Legislature or a Council of Advisers or both and specify their constitution, powers and functions. If there is a union of the States, the Central Government may similarly set up a Legislature for the union or a Council of Advisers or both. In either case the Provincial Government of Orissa

as such, that is, the Orissa Ministry will not presumably function in the Orissa States. If the Central Government appoint by common consent the Governor of Orissa to administer the States, the Governor of Orissa will be the only constitutional link between the Province and the States. Whether the States are administered as separate political units or together as a single unit, and whether one or more local Legislatures or Councils of Advisers are set up or not, the Orissa Legislature would not be competent to legislate for the States, and the Orissa Ministry will have nothing to do with their administration except perhaps in so far as the Ministry may be able to influence that administration through the personality of the common Governor. The net result will be the same as would follow from the administration of the States through a Lieutenant-Governor or a Chief Commissioner; and natural Orissa would be split up into anything between two and twenty-six separate administrative units. Consequently all the objections that have been urged in paragraphs 4 and 5 would apply with equal force to such an arrangement.

6. The Provincial Government cannot indeed help feeling that any statutory provision which would make it necessary to ascertain the wishes of the people as to whether they would prefer the States to be administered through the Governor of Orissa may have many embarrassing consequences. Even now from several quarters can be heard rumblings of anti-merger propaganda. If the President of the Union proceeds to ascertain the wishes of the people, the Provincial Government feel pretty certain that there will be very undesirable excitement in each State over the issue of merger *versus* non-merger. The people in many States, particularly the bigger States, might have visions of their own Ministries and Legislative Councils and separate independent existence. A good deal of public time will be wasted in all these controversies and then again there may be demand from neighbouring Provinces for administration of particular States to be handed over to them. This is a possible development which must be strongly deprecated in the public interest.

As a matter of fact, the people of the Orissa States have been repeatedly assured that under the new Constitution they will form parts of Orissa and will have their due share in the Provincial Legislature and administration, and further that they will be completely integrated with the present Orissa districts. It will be intolerable if under the new Constitution these hopes and promises are belied and the States continue to be separate entities to be administered quite separately by the Governor exercising delegated authority from the Central Government. Though the Constitution does not provide for this, it may well be argued that it will be open at any time to the President of the Union to withdraw the delegated authority and to take the administration in his own hands through a Lieutenant-Governor or a Chief Commissioner. All this would lead to a new field of constant friction and agitation and excitement in the public mind.

7. The Provincial Government are accordingly strongly of the opinion that these Orissa States should lose their individual existence and be finally amalgamated completely and irrevocably with the Orissa districts just as in the Saurashtra and other unions of such States they have merged irrevocably into a bigger whole. The Provincial Government do not see any difficulty in the way of bringing about a similar union between a Governor's Province and some of the States which would have the result that it would not then be necessary to mention these States at all in the list of the States in Part III of the First Schedule as States which have acceded to the Union. The Drafting Committee itself proposes that new linguistic Provinces may be constituted before the Constitution begins to function so that these may be mentioned in the list of Governors' Provinces. The Provincial Government must strongly press that so far as the Orissa States are concerned, they should even now be regarded as a part of natural Orissa, and it should be at once accepted that their political salvation lies in their complete merger with the Province of Orissa, in other words, in their complete integration with the Province by extension of its boundaries in order that the larger Province may be a single administrative and political unit with a single Legislature and a single executive.

8. If the strong views which the Provincial Government have in the matter are held to be justified and their considered recommendation is accepted, there seem to be three alternative ways of implementing it :

- (a) The solution which the Provincial Government would prefer and which appears to them to be the most satisfactory is that the area of the Province of Orissa should be immediately enlarged by the addition thereto of all the 25 Orissa States by an order under section 290 of the adapted Government of India Act, 1935. The Provincial Government are advised that there is no legal or constitutional objection to this course inasmuch as the Rulers of these States have definitely and irrevocably transferred their States to the Central Government for administration, and they have withdrawn all their rights and privileges therein excepting those specifically enumerated. For all practical purposes, the Rulers have no interest in the territories of these States or the management of their affairs except for their guaranteed allowances. The Provincial Government suggest that in these circumstances it is open to the Governor-General to declare an increase of the Province of Orissa by these States. If this order is made before the promulgation of the new Constitution, it would follow that in the list of the States in Part III of the First Schedule, the names of these particular States will not be mentioned at all; nor will it be necessary to follow the procedure about the ascertainment of the wishes of the people.

The Provincial Government do not consider that there are any insuperable administrative difficulties in the immediate and complete

merger of the States in the Province. The States are in their view developed enough to safely permit introduction of Part III of the Government of India Act. Actually during the last three months this Government have been actively engaged in the task of administrative reorganization of the States and this work is now nearing completion. In a few weeks' time there will be a common administrative machinery in the States and in the Province and common administrative personnel in all branches of administration on the same rates of pay who will be freely interchangeable between the two parts according to administrative convenience and needs. The provincial cadres of the All India Services are being built on the assumption that the States and the Province will be a single administrative unit having a common administration. Further, the question of unification and integration of laws in force in the Province and the States is being tackled in serious earnest; and although the process of this integration must necessarily be somewhat slow, the Provincial Government have every hope that so far as the essential laws are concerned, there will in a few months' time be just one set of them in the Province and the States.

- (b) Alternatively, the Provincial Government would suggest that the new Constitution should expressly contain provisions recognizing the *factum* of the *de facto* mergers that have already taken place and declare specifically, so far as Orissa is concerned, that as from the date of the coming into effect of the Constitution, the Province of Orissa should be deemed to have been increased by the territories of these States and the inhabitants thereof shall, like residents of Orissa, be entitled to elect their representatives to the Provincial and Central Legislatures. Such provisions should leave no room for doubt that the States would for all purposes form an integral part of Orissa and that there will be no question of any delegation of authority by the Central Government to the Governor of Orissa for their administration. If this solution is preferred by the Government of India, some amending clauses will have to be inserted in the Draft Constitution; and the Provincial Government would be extremely grateful if they are allowed an opportunity to see the amendments in draft.
- (c) The third and in the view of the Provincial Government the least satisfactory method is to take action under articles 3 and 4 of the Draft Constitution. This is open to the objection that complete and legal merger of the States with the Province must wait till the new Constitution is inaugurated and a law is passed by the future Union Parliament uniting the States and the Province of Orissa to form a single "State". It would appear that under the proviso to article 3, two conditions will have to be fulfilled before two or more States can be united to form a new State namely,
- (i) the Legislature of the State whose boundaries will be affected by

the proposal will have to adopt a resolution in this behalf ; and (ii) since the proposal would affect the boundaries of a State (or States) for the time being specified in Part III of the First Schedule, the previous consent of the State (or States) to the proposal will have to be obtained.

The Provincial Government presume that in respect of any proposal to unite the Orissa States with the Province of Orissa with a view to form a new State, the resolution referred to in (i) will have to be passed by the Orissa Legislative Assembly. With regard to condition (ii), the position appears to be that although the States in question will be specified in Part III of the First Schedule, they will be those which have ceded full and exclusive authority and jurisdiction and powers to the Government of India. The expression "State" as used in article 3(b) can be reasonably taken to mean only the authority which has executive and legislative powers in it ; and since the Government of India will exercise full executive and legislative powers in the Orissa States, the Provincial Government presume that the authority which would be competent to accord previous consent on behalf of the States will be, not their nominal Rulers, but the Government of the Union of India. If this is the correct legal and constitutional position, the Provincial Government would be prepared to wait for the enactment of the necessary law by the Union Parliament, in case the Government of India are for any reason not prepared to consider at present either of the other two alternatives (a) and (b), *provided* however they can be assured that immediately on the promulgation of the new Constitution and on an appropriate resolution being adopted by the Orissa Legislative Assembly set up under that Constitution, the Dominion Government will consent to the merger of the Orissa States with the Province of Orissa and will thereafter introduce a bill in Parliament for uniting the States with the Province in order to form a new State.

9. For many reasons, however, the solution last mentioned in the preceding paragraph is not in the view of the Government of Orissa at all satisfactory. Apart from the fact that it is doubtful if the present Government of India can bind their successor Government to a definite course of action, the political and constitutional future of the States will under this plan continue to be uncertain for a long time to come, and there will in consequence be constant agitation and excitement in the public mind and there will be no inclination in any quarter to settle down to the hard task of giving the people of the States good and efficient administration. From all points of view, therefore, it would be definitely expedient to reach an immediate clear-cut decision on the political future of the Orissa States so that no room for uncertainty on any score may exist, all opportunities for agitation of any sort may at once be eliminated, and all parties concerned may have time to reconcile themselves to the decision well before the new Constitution is inaugurated. The Provincial Government would accordingly

strongly press for the immediate acceptance of either of the alternatives (a) and (b) suggested in the preceding paragraph—and preferably the first alternative, the adoption of which would at once and for ever set at rest the controversy that has already raged for an undesirably long time over the constitutional future of the Orissa States. No matter what the position may be in regard to other States in other parts of India, for Orissa this integration of the neighbouring States with the present Province is for the people of Utkal a matter of almost life-and-death importance on which might lie the whole prosperity of this part of India and its people. The Provincial Government submit that there ought not to be any hesitation on the part of the Government of India in adopting the suggested solution for which there is obviously every justification. As already stated, none can seriously challenge the basic facts that historically, culturally and ethnologically the States are inseparable and integral parts of the old Utkal; that the people of the two parts, Moghalbandi and Garhjat, are the same and are bound by the natural ties of geographical contiguity, of a common language, a common culture and common traditions, of trade and commerce and of social and cultural intercourse; that the prosperity of one part depends on that of the other; and that administrative efficiency in what is now the Province of Orissa would be perpetually hampered unless the States form an integral part of the Province. The larger Province which will emerge from the amalgamation of the two parts will be a completely homogeneous administrative unit, both racially and linguistically, and will have enormous possibilities of development and no minority problems. If properly developed it will in the end be a stronger and more useful limb of the future Union of India than either the present Province of Orissa or the two or more administrative units in which natural Orissa may be split up in case, unfortunately, little heed is paid to the realities of the situation and undue importance is attached to legalistic considerations and the selfish propaganda of interested parties. The aim of the Provincial Government is to build up a larger and more prosperous Oriya-speaking Province which will be able to take its rightful place among the united peoples of India; and they are confident that a realistic approach to the problem will convince the Dominion Government that the solution which they have advocated is not only expedient but would be just and fair to all parties as well and would, moreover, best serve the true interests of India as a whole.

Amendments proposed by the Government of Orissa

1. In Part I of the First Schedule, the following proviso shall be inserted, namely :

Provided that the undermentioned Indian States which have ceded full and exclusive authority, jurisdiction and power to the Government of India shall be deemed to form part of the Governor's Province of Orissa.

(Specify all the Orissa States)

2. In Division 'B' of Part III of the First Schedule, after the words "Indian

States", the following words shall be inserted, namely :

Excluding the Indian States specified in the proviso to Part I. and such other consequential amendments to the various sections of the new Constitution Act as may be required.

Note : The Government of Orissa have expressed the view that the plan of administration of the Orissa Group of States as provided in article 212(1) of the Draft Constitution is wholly unsatisfactory. The amendments proposed by the Government of Orissa may be said to amount to annexation of the States in question. It is not known whether the Government of India would be prepared to go quite so far; our impression hitherto has been that the result of the Orissa type of "merger" is not to destroy the integrity of each State. In this respect it differs from the Kathiawar type of merger where the individual States have ceased to exist.

An alternative solution that suggests itself is to add the following proviso to article 212(2) of the Draft :

Provided that the President may at any time by order direct that any such State or any group of such States shall be governed for all purposes as if the State or the group of States formed part of a named State specified for the time being in Part I of the First Schedule ; and he may by such Order give such incidental and consequential directions (including directions as to representation in the Legislature) as may be necessary for the purpose. (See *Drafting Committee's amendment below*.)

Such a proviso would be on the lines of section 47 of the Government of India Act, 1935, as adapted, which provides for the Government of Berar as one Governor's Province along with the Central Provinces.

At the same time article 212(2) itself may be slightly amended so as to read :

(2) Any State for the time being specified in Part III of the First Schedule whose Ruler has ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State to the Government of India or any group of such States shall be administered in all respects as if the State or the group of States were for the time being specified in Part II of the First Schedule ; and, accordingly all the provisions of this Constitution relating to States specified in the said Part II shall apply to such State or group of States. (See *Drafting Committee's amendment below*.)

The Drafting Committee accepted these suggestions for amendment of article 212.

The Special Committee did not specifically consider these amendments. The committee was however of the view that the reference to Rulers should be omitted from clause (1) of article 212. (See *Drafting Committee's amendment below*.)

Drafting Committee : (i) That in clause (1) and the proviso to clause (1) of article 212 for the words "Governor or Ruler" wherever they occur, the expression "Government" be substituted.

- (ii) That for clause (2) of article 212 the following be substituted :
- (2) Any State for the time being specified in Part III of the First Schedule whose Ruler has ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State to the Government of India *or any group of such States* shall be administered in all respects as if the State *or the group of States* were for the time being specified in Part II of the First Schedule ; and, accordingly all the provisions of this Constitution relating to States specified in the said Part II shall apply to such State *or group of States*.
- (iii) That to clause (2) of article 212 the following proviso be added :
 Provided that the President may at any time by order direct that any such State or any group of such States shall be governed for all purposes as if the State or the group of States formed part of a named State specified for the time being in Part I of the First Schedule ; and he may by such order give such incidental and consequential directions (including directions as to representation in the Legislature) as may be necessary for the purpose.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendments.

Note by Alladi Krishnaswami Ayyar on the merger of the States and the provision in regard to States : I agree generally with the note by the Constitutional Adviser. The one central fact to be remembered in this connection is that the titular or legal sovereignty continues to inhere in the Ruler and it is the jurisdiction in the different spheres alone that is ceded. If so, as a matter of principle, the merged State or States cannot be treated as a part of the Province unless we invoke the analogy of Berar. The other objection, that in article 212 reference is made to a State and not to the Government of a State, as is pointed out, can be easily met by a slight change in the draft by including a group of States. If, as a matter of policy and principle, it is decided to place them on the same footing as the Kathiawar States or the other States which have been recently grouped, the new group will have to be dealt with similarly to the Kathiawar group. If the Berar example, for any reason, is to be followed, that would necessitate supplementary provisions being inserted in the Provincial Constitution, making the sums payable to the Ruler and his family a first charge on the aggregate Provincial revenues and provision will have to be made also for the representation in the Provincial Assemblies. In the case of Berar, the contribution to the Nizam was paid out of the Central revenues under treaty arrangements. The case of Berar being *sui generis*, I doubt whether this can be made a normal feature of Provincial constitutions.

ARTICLE 213

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That for article 213, the provisions of the

Report of the *ad hoc* Committee on Chief Commissioners' Provinces be substituted.

Note : The remarks on the amendment under article 212 would also apply to this amendment.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to redraft sub-clauses (a) and (b) of article 213 as follows :

(a) a local body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State, or

(b) A Council of Advisers or Ministers to aid and advise the Chief Commissioner or the Lieutenant-Governor in the administration of the State.

R. K. Sidhva : That in article 213, the words "except Delhi" be inserted after the words "President may".

Note : This amendment which seeks to exclude Delhi from the purview of article 213 involves a question of policy. The observations in paragraph 13 of the letter of the Chairman of the Drafting Committee to the President of the Constituent Assembly may be seen in this connection.*

ARTICLE 214

C. M. Poonacha : That the following proviso be inserted at the end of article 214 : "Provided that the election of the Coorg Legislative Council shall be on the basis of (a) adult franchise (b) joint electorates."

Note : This amendment is unnecessary in view of the new articles 289-A and 289-B recommended by the Special Committee.

Drafting Committee : That in article 214, for the words "shall remain unchanged" the words "shall be the same as they were immediately before the commencement of this Constitution" be substituted.

Note : The Drafting Committee was of the view that in article 214, for the words "shall remain unchanged" the words "shall be the same as they were immediately before the commencement of this Constitution" should be substituted to make the intention clearer.

Decision of the Drafting Committee, October, 1948 : The Committee decided to sponsor its amendment.

ALTERNATIVE PROVISIONS TO GIVE EFFECT TO THE RECOMMENDATIONS OF THE *ad hoc* COMMITTEE ON CHIEF COMMISSIONERS' PROVINCES§

Drafting Committee : I. That for Part VII (articles 212-214) the following be substituted :

*See Vol. III, Doc. No. 6, p. 514.

§For Report of the Committee see Vol. III, Doc. No. 3(v), pp. 248 ff.

PART VII

THE STATES IN PART II OF THE FIRST SCHEDULE

212. *Administration of States in Part II of the First Schedule*: (1) Subject to the other provisions of this Part, a State for the time being specified in Part II of the First Schedule shall be administered by a Lieutenant-Governor with a Council of Ministers and a Legislature of the State.

(2) The Lieutenant-Governor shall be appointed by the President by warrant under his hand and seal and the Legislature of the State shall consist of the Lieutenant-Governor and one House to be known as the Legislative Assembly.

213. *Application of the provisions of Chapters II and III of Part VI and the Fourth Schedule to States in Part II of the First Schedule*: Subject to the provisions of articles 214 to 214-F of this Chapter and to such adaptations whether by way of variation, addition or repeal as the President may by order direct, the provisions of Chapters II and III of Part VI of, and of the Fourth Schedule to, this Constitution shall apply in relation to the Executive and the Legislature of each of the States for the time being specified in Part II of the First Schedule as they apply in relation to the Executive and the Legislature of a State for the time being specified in Part I of that Schedule.

214. *Removal of Lieutenant-Governor from Office*: A Lieutenant-Governor may be removed from office by the President for violation of the Constitution.

214-A. *Special provisions as to Ministers*: (1) The Lieutenant-Governor's Ministers shall not exceed three in number, shall be appointed by him and shall hold office during his pleasure:

Provided that the Lieutenant-Governor may, if he so considers necessary, appoint with the previous approval of the President more than three Ministers.

(2) In case of difference of opinion between the Lieutenant-Governor and his Ministers on any matter, the Lieutenant-Governor may, in his discretion, refer the matter to the President whose decision thereon shall be final and the Lieutenant-Governor shall act according to such decision.

(3) The validity of anything done by the Lieutenant-Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this article.

214-B. *Special provisions as to the representation in the Legislative Assemblies of States in Part II of the First Schedule*: The representation of each territorial constituency in the Legislative Assembly of a State for the time being specified in Part II of the First Schedule shall be on the basis of the population of that constituency as ascertained at the last preceding census and shall, save in the case of constituencies having seats

reserved for the purposes of article 294 of this Constitution, be on the following scale, namely :

- (a) in the case of a constituency in the State of Delhi, on the scale of not more than one representative for every twenty thousand of the population;
- (b) in the case of a constituency in the State of Ajmer-Merwara including the area known as Panth Piploda, on the scale of not more than one representative for every fifteen thousand of the population ; and
- (c) in the case of a constituency in the State of Coorg, on the scale of not more than one representative for every five thousand of the population:

Provided that the total number of members in the Legislative Assemblies of the States of Delhi, Ajmer-Merwara (including Panth Piploda) and Coorg shall in no case be more than fifty, forty and thirty-three respectively.

214-C. *Assent to Bills* : (1) A Bill which has been passed by the Legislative Assembly of a State for the time being specified in Part II of the First Schedule, shall be presented to the Lieutenant-Governor and the Lieutenant-Governor shall reserve the Bill for the consideration of the President :

Provided that the Lieutenant-Governor before reserving the Bill for the consideration of the President may return the Bill to the Assembly together with a message requesting that the Assembly will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Assembly shall reconsider it accordingly and if the Bill is passed again by the Assembly with or without amendment and presented to the Lieutenant-Governor, the Lieutenant-Governor shall reserve the Bill for the consideration of the President.

(2) When a Bill is reserved by a Lieutenant-Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom :

Provided that the President may direct the Lieutenant-Governor to return the Bill to the Assembly together with such a message as is mentioned in the proviso to clause (1) of this article, and, when a Bill is so returned, the Assembly shall reconsider it accordingly within a period of six months from the date of receipt of such message and if it is again passed by the Assembly with or without amendment, it shall be presented again to the President for his consideration.

214-D. *Approval by the President of the grants made by the Assembly and the inclusion of the grants so approved in the schedule of authorized expenditure* : (1) All grants made by the Legislative Assembly of a State for the time being specified in Part II of the First Schedule on demands for grants moved in the Assembly in respect of the estimated expenditure embodied in the annual financial statement or in the supplementary statement laid before the Assembly or on demands for excess grants moved in the Assembly, shall be submitted by the Lieutenant-Governor to the President for approval and the President in approving the grants made by

the Assembly may make such modifications therein as he considers necessary.
(2) Of the grants made by the Legislative Assembly only the grants as so approved by the President shall be specified in the schedule of authorized expenditure to be laid before the Assembly.

214-E. *Transitional provisions for administration of States for the time being specified in Part II of the First Schedule* : Until the Legislative Assembly of a State for the time being specified in Part II of the First Schedule has been duly constituted under this Constitution and the Ministers first appointed by the Lieutenant-Governor of such State under this Constitution have entered upon their office the State shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or Lieutenant-Governor to be appointed by him and the President may by order create or continue for the State for the period during which it is so administered :

(a) a local body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State, or

(b) a Council of Advisers or Ministers to aid and advise the Chief Commissioner or the Lieutenant-Governor in the administration of the State,

or both with such constitution, powers and functions, in each case, as may be specified in the order and may also by order direct that during the period the State is so administered, this Constitution shall have effect in relation to such State subject to such adaptations whether by way of variation, addition or repeal, as he may deem necessary or expedient.

214-F. *Coorg* : Until the Legislative Assembly of Coorg has been duly constituted and summoned to meet for the first session under the provisions of this Constitution or until other provision is made in this behalf by the President, the constitution, powers and functions of the Coorg Legislative Council and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall be the same as they were immediately before the commencement of this Constitution.

214-G. *Establishment of High Courts for Delhi and Ajmer-Merwara* : As soon as may be after the commencement of this Constitution provision shall be made by Act of Parliament for the establishment of a High Court in Delhi for the States of Delhi and Ajmer-Merwara including the area known as Panth Piploda in accordance with the provisions of Chapter VII of Part VI of this Constitution.

214-H. *High Court in Madras to continue to exercise jurisdiction in relation to Coorg* : Until other provision is made by Act of Parliament, the High Court in Madras shall continue to exercise jurisdiction in relation to the areas included within the State of Coorg and to have the same jurisdiction in relation to such areas as it has with respect to any other area in relation to which it exercises jurisdiction.

214-I. *Application of provisions of Chapters VII and VIII of Part VI to States in Part II of the First Schedule* : The provisions of Chapters VII and

VIII of Part VI of this Constitution shall apply in relation to a High Court which has its principal seat in a State for the time being specified in Part II of the First Schedule and to district courts and courts subordinate thereto and to district judges and members of the subordinate judicial service in such State as they apply in relation to a High Court which has its principal seat in a State for the time being specified in Part I of that Schedule and to district courts and courts subordinate thereto and to district judges and members of the subordinate judicial service in such State subject to such adaptations, whether by way of variation, addition or repeal as the President may, by order, direct.

Explanation : In this article the expressions "district judge" and "subordinate judicial service" have the same meanings as in Chapter VIII of Part VI of this Constitution.

214-J. *Special provisions for the administration of States or groups of States in Part III of the First Schedule whose Ruler or Rulers has or have ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State or States to the Government of India :* Any State for the time being specified in Part III of the First Schedule whose Ruler has ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State to the Government of India or any group of such States shall be administered in all respects as if the State or the group of States were for the time being specified in Part II of the First Schedule; and, accordingly all the provisions of this Constitution relating to States specified in the said Part II shall apply to such State or group of States :

Provided that the President may at any time by order direct that any such State or any group of such States shall be governed for all purposes as if the State or the group of States formed part of a named State specified for the time being in Part I of the First Schedule; and he may by such order give such incidental and consequential directions (including directions as to representation in the Legislature) as may be necessary for the purpose.

New Article 278-A

II. After article 278 the following article be inserted :

278-A. *Provisions in case of failure of constitutional machinery in States in Part II of the First Schedule :* (1) If at any time after the expiry of the period during which a State for the time being specified in Part III of the First Schedule is administered under article 214-E of this Constitution the President is satisfied that a situation has arisen in which the government of such State cannot be carried on in accordance with the provisions of this Constitution, he may, by proclamation, assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Lieutenant-Governor or any body or authority in the State, and any such proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable

for giving effect to the objects of the proclamation including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend, either in whole or in part, the operation of any provision of this Constitution relating to High Courts.

(2) Any such proclamation may be revoked or varied by a subsequent proclamation.

(3) A proclamation under this article—

(a) shall be laid before each House of Parliament ;

(b) except where it is a proclamation revoking a previous proclamation, shall cease to operate at the expiration of six months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

(4) If the President by a proclamation issued under clause (1) of this article assumes to himself any power of the Legislature of the State to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until one year has elapsed from the date on which the proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Constitution to Acts or laws of or made by the Legislature of a State for the time being specified in Part II of the First Schedule shall be construed as including a reference to such a law.

New Article 291-A

III. After article 291 in Part XIII, the following article be inserted :

291-A. *Elections to the Legislative Assemblies of States in Part II of the First Schedule*: Subject to the provisions of this Constitution, Parliament or the Legislature of a State for the time being specified in Part II of the First Schedule may, from time to time, by law make provision with respect to all matters relating to or in connection with elections to the Legislative Assembly of the State including matters necessary for securing the due constitution of such Assembly and the delimitation of constituencies.

IV. *If the alternative provisions proposed above are adopted, then the following consequential changes will be necessary in the various other provisions of the Draft Constitution :*

Article 3 : That in clause (a) of the proviso* to article 3, after the word and figure "Part I" the words and figure "or Part II" be inserted.

Article 27 : That in article 27, the words "for the time being specified in Part I or Part III of the First Schedule" be omitted.

Article 47 : That in clause (a) of the Explanation to clause (2) of article 47, after the word and figure "Part I" the words and figure "or Part II" be inserted.

*As proposed to be amended by the Drafting Committee—see p. 10 *supra*.

Article 55 : That in para (a) of the Explanation to clause (4) of article 55, after the word and figure "Part I" the words and figure "or Part II" be inserted.

Article 59 : That in clause (3) of article 59, after the words "the Governor" the words "or the Lieutenant-Governor" be inserted.

Article 67 : That in clause (3) of article 67, the words and figures "Part I or Part III of" be omitted.

That clause (4) of article 67 be omitted.

Article 83 : That in sub-clause (a) of clause (2) of article 83, after the word and figure "Part I" the words and figure "or Part II" be inserted.

Article 134 : That in para (a) of the Explanation to clause (2) of article 134, after the word and figure "Part I" the words and figure "or Part II" be inserted.

Article 167 : That in sub-clause (a) of clause (2) of article 167, after the word and figure "Part I" the words and figure "or Part II" be inserted.

Article 206 : That in clause (1) of article 206, for the words "The Legislature of a State for the time being specified in Part I of the First Schedule" the words "The appropriate Legislature" be substituted.

That in clause (1) of article 206, for the words "the State" the words "a State for the time being specified in Part I or Part II of the First Schedule" be inserted.

That in clause (1) of article 206, for the words "that State" wherever they occur, the words "such State" be substituted.

That in clause (2) of article 206, for the words "Legislature of the State" the words "appropriate Legislature" be substituted.

Article 208 : That in clause (b) of article 208, the words and figure "Part I or Part III of" be omitted.

Article 209 : That in clause (b) of article 209, after the word "Governor", in the second place where it occurs, the words "or the Lieutenant-Governor" be inserted.

That in clause (b) of article 209, the words and figures "Part I or Part III of" be omitted.

Article 217 : That in clause (2) of article 217, after the word and figure "Part I" the words and figure "or Part II" be inserted.

That after clause (3) of article 217, the following new clause be inserted :

(3a) Parliament and, subject to clause (1) of this article, the Legislature of any State for the time being specified in Part II of the First Schedule, also have power to make laws for such State or any part thereof with respect to any of the matters enumerated in the State List.

That in clause (4) of article 217, for the words "not included for the time being in Part I or Part III of the First Schedule" the words "not being or included within a State" be substituted.

Article 220 : That for clause (2) of article 220, the following be substituted :

(2) Parliament and the Legislature of a State for the time being specified

in Part II of the First Schedule also have power to make laws with respect to the constitution and organisation of any High Court having its principal seat within such State.

Article 221: That in clause (3) of article 221, after the word and figure "Part I" the words and figure "or Part II" be inserted.

That for clause (4) of article 221, the following clause be substituted :

(4) Parliament and also the Legislature of a State for the time being specified in Part II of the First Schedule in relation to which or in relation to any area within which a High Court exercises jurisdiction have power to make laws regarding the jurisdiction and powers of such High Court in relation to such State or area with respect to any of the matters enumerated in the State List.

Article 222: That in article 222, after the word and figure "Part I" the words and figure "or Part II" be inserted.

Article 231: That in clause (1) of article 231, after the words "Legislature of a State" the words "for the time being specified in Part I or Part III of the First Schedule" be inserted.

That after clause (2) of article 231, the following new clause be inserted :

(3) If any provision of a law made by the Legislature of a State for the time being specified in Part II of the First Schedule is repugnant to any provision of a law made by Parliament, then the law made by Parliament whether passed before or after the law made by the Legislature of the State, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Article 232: That in article 232, after the word and figure "Part I" the words and figure "or Part II" be inserted.

That in clause (b) of article 232, after the words "that of the President" the words "or of the Lieutenant-Governor" be inserted.

Article 239: That in article 239, the words and figure "for the time being specified in Part I or Part III of the First Schedule" be omitted.

Article 241: That article 241 be omitted.

Article 242: That in article 242, for the words "any of the three" the words "either of the two" be substituted.

Article 247: That for clauses (b) and (c) of article 247, the following clause be substituted :

(b) Reference to the territory for the time being specified in Part IV of the First Schedule shall include references to any other territory comprised within the territory of India but not specified in that Schedule.

Article 249: That in sub-clause (a) of clause (1) of article 249, for the words "State for the time being specified in Part II" the words "territory for the time being specified in Part IV" be substituted.

Article 250: That in clause (2) of article 250, for the words "States for the time being specified in Part II" the words "the territory for the time being specified in Part IV" be substituted.

Article 251 : That in clause (2) of article 251, for the words "States for the time being specified in Part II" the words "the territory for the time being specified in Part IV" be substituted.

That in clause (3) of article 251, for the words "States for the time being specified in Part II" the words "the territory for the time being specified in Part IV" be substituted.

Article 263 : That in clause (1) of article 263, after the word "Governor" the words "or the Lieutenant-Governor" be inserted.

That in clause (2) of article 263, after the words "Legislature of a State" the words "and, in the case of a State for the time being specified in Part II of the First Schedule, also Parliament" be inserted.

Article 267 : That in article 267, after the word and figure "Part I" the words and figure "or Part II" be inserted.

Article 269 : That for clause (1) of article 269, the following clause be substituted :

(1) Subject to the provisions of this article, the executive power of a State for the time being specified in Part I or Part II of the First Schedule extends to borrowing within the territory of India upon the security of the revenues of the State within such limits, if any, as may from time to time be fixed, in the case of a State so specified in Part I of that Schedule, by the Legislature of such State by law, and in the case of a State so specified in Part II of that Schedule, by Parliament or the Legislature of such State by law, and to the giving of guarantees within such limits, if any, as may be so fixed.

That for clause (2) of article 269, the words and figures "Part I or Part III of" be deleted.

That in clause (3) of article 269, the words and figures "Part I or Part III of" be deleted.

New Article 270-A

That after article 270, the following new article be inserted :

270-A. Transfer of assets and liabilities from the Government of India to a State in Part II of the First Schedule : As from the date on which the Ministers first appointed by the Lieutenant-Governor of a State for the time being specified in Part II of the First Schedule after the first constitution of the Legislative Assembly of the State enter upon their office, all property and assets held and all debts and liabilities incurred by the Government of India in connection with the affairs of such State shall vest in and be transferred to the Government of such State subject to such adjustments, if any, as the President may by order direct :

Provided that if any question arises whether any property or assets or any debts or liabilities were so held or incurred by the Government of India, the question shall be referred to the President and his decision thereon shall be final.

Article 271 : That in article 271, after the word and figure "Part I" in the two places where they occur, the words and figure "or Part II" be inserted.

Article 272 : That in clause (1) of article 272, after the word and figure "Part I" the words and figure "or Part II" be inserted.

That in clause (2) of article 272, after the word and figure "Part I" the words and figure "or Part II" be inserted.

Article 273 : That in clause (1) of article 273, after the word and figure "Part I" the words and figure "or Part II" be inserted.

That in clause (1) of article 273, after the word "Governor" in the two places where it occurs, the words "or the Lieutenant-Governor" be inserted.

That in clause (2) of article 273, after the word "Governor" the words "or Lieutenant-Governor" be inserted.

Article 274 : That in clause (1) of article 274, after the word and figure "Part I" the words and figure "or Part II" be inserted.

That for sub-clause (a) of clause (2) of article 274, the following sub-clause be substituted :

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India or, in the case where the proceedings relate to the affairs of a State for the time being specified in Part II of the First Schedule, such State or, as the case may be, the Union of India and such State shall be deemed to be substituted for the Dominion in those proceedings ;
and

Article 281 : That in article 281, after the word and figure "Part I" the words and figure "or Part II" be inserted.

Article 284 : That in clause (2) of article 284, after the words "Governor" or "Governors" the words "or Lieutenant-Governor" or "Lieutenant-Governors" be inserted.

That in clause (2) of article 284, after the words "by the Governor" the words "or the Lieutenant-Governor" be inserted.

That in clause (3) of article 284, after the words "the Governor" the words "or the Lieutenant-Governor" be inserted.

Article 285 : That in article 285, after the words "the Governor" wherever they occur, the words "or the Lieutenant-Governor" be inserted.

Article 286 : That in article 286, after the words "the Governor" wherever they occur, the words "or the Lieutenant-Governor" be inserted.

Article 287 : That in article 287, for the words "an Act made by Parliament or by the Legislature of the State" the words "Acts of the appropriate legislature" be substituted.

Article 289 : That to article 289, the following new clause be added :

(3) The superintendence, direction and control of all elections to the Legislative Assembly of a State for the time being specified in Part II of the First Schedule held under this Constitution including the appointment of election tribunals for the decisions of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the Lieutenant-Governor of the State.

Article 294 : That for clause (1) of article 294, the following clause be

substituted :

(1) Seats shall be reserved for—

(a) the Muslim community and the Scheduled Castes in the Legislature of every State ;

(b) the Scheduled Tribes (except the Scheduled Tribes in the tribal areas of Assam) in the Legislature of every State for the time being specified in Part I of the First Schedule ; and

(c) the Indian Christian community in the Legislatures of the States of Madras and Bombay.

Explanation : In this clause and in clause (3) of this article the expression "Legislature" means, where the Legislature is bicameral, "the Lower House of the Legislature".

That for clause (3) of article 294, the following clause be substituted :

(3) The number of seats reserved for any community in the Legislature of any State under clause (1) of this article shall bear, as nearly as may be, the same proportion to the total number of seats in the Legislature as the population of the community in the State or part of the State in respect of which seats are so reserved bears to the total population of the State.

Explanation : All the Scheduled Castes in a State shall be deemed to be a single community for the purposes of this clause and so also all the Scheduled Tribes in a State.

Article 296 : That in article 296, the words "for the time being specified in Part I of the First Schedule" be omitted.

Article 299 : That in clause (1) of article 299, after the word and figure "Part I" the words and figure "or Part II" be inserted.

That in clause (1) of article 299, after the words "the Governor" the words "or the Lieutenant-Governor" be inserted.

That in clause (3) of article 299, after the words "the Governor", in the first place where they occur, the words "or, as the case may be, the Lieutenant-Governor" be inserted.

That in clause (3) of article 299, after the words "the Governor", in the second and third places where they occur, the words "or the Lieutenant-Governor" be inserted.

Article 302 : That in the marginal heading to article 302 for the words "and Governors" the words "Governors and Lieutenant-Governors" be substituted.

That in clause (1) of article 302, after the words "the Governor" the words "or Lieutenant-Governor" be inserted.

That in clause (2) of article 302, after the words "the Governor" the words "or Lieutenant-Governor" be inserted.

That in clause (3) of article 302, after the words "the Governor" the words "or Lieutenant-Governor" be inserted.

That in clause (4) of article 302, after the words "the Governor" in the first place where they occur, the words "or Lieutenant-Governor" be inserted.

That in clause (4) of article 302, for the words "or Governor" the words "or as Governor or Lieutenant-Governor" be inserted.

In clause (4) of article 302, after the words "the Governor" in the second place where they occur, the words "or the Lieutenant-Governor" be inserted.

Article 304: That in the proviso to clause (1) of article 304, for the word and figure "Part I" the words and figures "Parts I and II" be substituted.

Article 305: That in article 305, the words "for the time being specified in Part I of the First Schedule" be omitted.

Second Schedule

Part I

That in the heading above paragraph 1 of Part I of the Second Schedule, for the words "of States for the time being specified in Part I", the words "and Lieutenant-Governors of States for the time being specified in Parts I and II" be substituted.

That for paragraph 1 of Part I of the Second Schedule the following paragraph be substituted :

1. There shall be paid to the President, to the Governors of the States for the time being specified in Part I of the First Schedule and to the Lieutenant-Governors of the States for the time being specified in Part II of that Schedule the following emoluments per mensem, that is to say :

The President 5,500 rupees;

The Governor of a State 4,500 rupees;

The Lieutenant-Governor of a State —, rupees.

That in paragraph 2 of Part I of the Second Schedule, for the words "and to the Governors" the words "to the Governors and to the Lieutenant-Governors" be substituted.

That in paragraph 2 of Part I of the Second Schedule, the following be added at the end :

The Lieutenant-Governor of a State rupees.

That in paragraph 3 of Part I of the Second Schedule, for the words "and a Governor" the words "a Governor and a Lieutenant-Governor" be substituted.

That in paragraph 3 of Part I of the Second Schedule, after the words "or Governor" the words "or Lieutenant-Governor" be inserted.

That in paragraph 4 of Part I of the Second Schedule, for the words "and each Governor" the words "each Governor and each Lieutenant-Governor" be substituted.

That in paragraph 5 of Part I of the Second Schedule, after the words "the Governor" in the two places where they occur, the words "or the Lieutenant-Governor" be inserted.

Part IV

That in paragraph 11 of Part IV of the Second Schedule, after the

words "the Governor" the words "or the Lieutenant-Governor" be inserted.

That in sub-clause (i) of clause (b) of paragraph 13 of Part IV of the Second Schedule, after the words "the Governor" the words "or the Lieutenant-Governor" be inserted.

Third Schedule

That in item V of the forms of declarations in the Third Schedule, in the heading after the words and figure "Part I" the words and figure "or Part II" be inserted.

That in item VI of the forms of declarations in the Third Schedule, in the heading after the word and figure "Part I" the words and figure "or Part II" be inserted.

That in item VI of the forms of declarations in the Third Schedule, after the words "the Governor" (in line 20 on page 167 of the Draft) the brackets and words "(or the Lieutenant-Governor)" be inserted.

That in item VII of the forms of declarations in the Third Schedule, in the heading after the word and figure "Part I" the words and figure "or Part II" be inserted.

Seventh Schedule

That in entry 12 of List II (State List) of the Seventh Schedule, after the words "the Governor" the words "or the Lieutenant-Governor" be inserted.

Note: The *ad hoc* Committee on the Chief Commissioners' Provinces had in its report made certain recommendations regarding the centrally administered areas, namely, Delhi, Ajmer-Merwara, Coorg, Panth Piploda and the Andaman and Nicobar Islands. The Drafting Committee did not agree with some of the recommendations of the *ad hoc* Committee and made its own proposals in the Draft Constitution of February 1948.

The Special Committee was of opinion that as far as possible there should be no centrally administered areas except for strategic or defence purposes. If there remain any such areas they should be provided with the largest measure of autonomy after ascertaining the wishes of the people therein.

The Special Committee was further of opinion that alternative provisions for the administration of the present centrally administered areas should be prepared on the basis of the report of the *ad hoc* Committee on the Chief Commissioners' Provinces and it should be left to the Constituent Assembly to decide which set of provisions should be retained in the Constitution for the States which are now administered as Chief Commissioners' Provinces.

The amendments proposed by the Drafting Committee accordingly contain alternative provisions for the administration of States in Part II of the First Schedule prepared on the basis of the recommendations of the *ad hoc* Committee on Chief Commissioners' Provinces.

For facility of reference those proposals made by the *ad hoc* Committee which had not been accepted by the Drafting Committee were shown as Appendix II in the reprint of the Draft (indicating the recommendations of the Drafting Committee) published in October 1948.

14. *Relations between the Union and the States*

LEGISLATIVE RELATIONS

ARTICLES 217 AND 223(1)

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That for articles 217 and 223(1), the following be substituted :

217. (1) The Legislature of any of the States in Part I, Schedule I, shall have exclusive power to make laws for the State or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).

(2) The Legislature of any of the States in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided, however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof, and an Act of the Legislature of the State shall have effect in and for the State as long as and as far only as it is not repugnant to any Act of the Union Parliament.

(3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.

(4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.

(b) Subject to the general powers of Parliament under sub-clause (a), the Legislature of any of the States in Part II, Schedule I, shall have power to make laws in relation to matters coming within the following classes of subjects :

Provided, however, that any law passed by that unit shall have effect in and for that unit so long and as far only as it is not repugnant to any law of the Union Parliament.

(This provision is necessary, if the recommendations of the *ad hoc* Committee on Chief Commissioners' Provinces in this regard are accepted.)

(5) The power to legislate, either of the Union Parliament or the Legislature of any State, shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular Legislature.

(6) Where a law of a State is inconsistent with a law of the Union Parliament or with any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Union Parliament or as the case may be the existing law shall prevail and the law of the State shall to the extent of repugnancy be void.

Note: [The amendment as originally given notice of read as follows :

That Alladi Krishnaswami Ayyar's* draft articles in substitution of articles 217 and 223(1) of the Draft Constitution be adopted.

It has been put in the present form so as to show the effect of the amendment clearly.]

The draft suggested by Alladi Krishnaswami Ayyar does not adequately provide for the cases in which there is overlapping of matters falling within more than one of the Lists. For example, the subject "ancient monuments" falls in entry 60 of the Union List, and the subject "religious endowments" falls in entry 43 of the State List. Now, there may be a temple which is both an ancient monument and a religious endowment. Which entry prevails over which? More specifically, suppose the State Legislature, legislating for the temple as a religious endowment, enacts certain provisions which conflict with a law made by Parliament legislating for it as an ancient monument. Which provisions prevail over which? Under the Draft, as it stands at present, the Union List is the dominant List, because of the opening words of article 217(1) : "Notwithstanding anything in the two next succeeding clauses", so that in the case put above, the Central law prevails over the Provincial. Alladi Krishnaswami Ayyar's alternative draft gives no clear indication on this point : if anything, it makes the Provincial List the dominant list, because it omits the words "Notwithstanding etc." and starts by giving the States an unqualified exclusive power in respect of all matters in the State List together with all incidental powers. [See clauses (1) and (5).]

The existing provisions in article 217 are based on those of section 100 of the Government of India Act, 1935. No one will pretend that any enumeration of powers can be litigation-proof; but the existing provisions have this advantage, that they have been in force for over ten years and their meaning and implications have been fairly established by judicial decisions. A new form of words will unsettle a familiar scheme without any clear compensating advantage.

Further, Alladi's draft provides that if an Act of the Legislature of a State in Part I of the First Schedule with respect to a matter in the Concurrent List is repugnant to any Act of the Union Parliament with respect

*See Vol. III, Doc. No. 6, Appendix.

to such matter, then the Act of the State Legislature shall to the extent of the repugnancy be void. It does not contain any provision on the lines of clause (2) of article 231 that the said repugnancy will be saved if the Act of the State Legislature has been reserved for the consideration of the President and has received his assent. Alladi suggests that such a provision may be inserted if considered necessary, although he himself does not think it necessary. Those who have had to draft Provincial Bills know how often they contain some provision which relates to criminal or civil procedure and may conflict with something contained in the Procedure Codes; in all such cases, unless there is a provision in the Constitution of the kind contained in article 231(2), the Province will have to move the Centre to enact the necessary law.

It has been held by the Privy Council in *A. G. for Ontario vs. A. G. for Canada* (1894, A.C., p. 189) that the power to enact incidental or ancillary legislation is included in the grant of a substantive power and follows without any express provision to that effect. Our courts have hitherto acted on this principle. It is not therefore necessary to provide expressly that the power to legislate extends to all matters essential to the effective exercise of that power as suggested by Alladi.

The Ministry of Industry and Supply has expressed the view that the redraft of articles 217 and 223(1) proposed by Alladi Krishnaswami Ayyar as set out in the Appendix to the Draft Constitution is preferable.

Note: Attention is invited in this connection to the amendment of Santhanam and others and note thereon.

ARTICLE 218

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai: That article 218 be omitted.

Note: Article 218 merely repeats, for completeness and on account of the importance of the Supreme Court, the powers already conferred on Parliament by clause (1) of article 217 read with entry 52 of the Union List in the Seventh Schedule to the Draft. The powers of Parliament with respect to an institution of such paramount importance as the Supreme Court should not be left to be merely inferred from the Lists. If articles 220, 221 and 222, which deal with the powers to make laws with respect to the constitution, organization, jurisdiction and powers of the High Courts, are retained, then there is hardly any objection to article 218 being also retained.

T. A. Ramalingam Chettiar: That in article 218, the words "and the High Courts" be inserted at the end.

Note: Provisions with respect to powers to make laws regarding the constitution, organization, jurisdiction and powers of the High Courts are contained in articles 220 to 222 of the Draft. If this amendment is accepted

then the Legislatures of States will not have any power to make laws with respect to the constitution, organization, jurisdiction and powers of the High Courts. See the notes on amendments under article 206.

ARTICLE 220

T. A. Ramalingam Chettiar : That article 220 be deleted.

Note : The remarks on the amendment to article 218 will apply to this amendment.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That the following words be inserted at the beginning of clause (1) of article 220 :

Subject to the provisions of this Constitution.

Note : This amendment is hardly necessary in view of the opening words "Subject to the provisions of this Constitution" in clause (1) of article 216 which deal with the extent of the legislative powers of Parliament and of the Legislatures of States.

ARTICLE 223

T. A. Ramalingam Chettiar : That in clause (1) of article 223, for the words "Parliament has exclusive power to" the words "Parliament or the Legislature of a State may" be substituted.

Note : This amendment seeks to put into the Concurrent List all residuary matters which are not mentioned in the Concurrent List or in the State List. It runs counter to the recommendation of the Union Powers Committee that residuary powers should remain with the Centre.

ARTICLE 224

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That the following be added at the end of clause (b) of article 224 :

Provided that such power may be extended by agreement between the Government of India and that State or group of States.

Note : It is better to redraft article 225 for the purpose which the sponsors of this amendment have in view. Accordingly the following amendment is suggested :

In article 225, for the words "shall be subject to the terms of any agreement entered into in that behalf by that State or group of States with the Government of India and the limitations contained therein", the words "may be limited or extended by the terms of any instrument or agreement entered into in that behalf by that State or group of States with the Government of the Dominion of India or the Government of India" be substituted.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That the words "for the time being specified in Part III of the First Schedule" be deleted from clause (c) of article 224.

Note : If this amendment is accepted, then Parliament will not have any power to make laws with respect to the incorporation, regulation and winding up of trading corporations owned or controlled by a State for the time being specified in Part I or Part II of the First Schedule. Further if this power of legislation be conferred on the Legislatures of the States, then there will be different laws with respect to incorporation, regulation and winding up of trading corporations owned or controlled by the Union and similar corporations owned or controlled by States, which is hardly desirable. In the case of States for the time being specified in Part III of the First Schedule an agreement entered into under article 225 may confer on Parliament the power to make laws with respect to all matters including the incorporation, regulation and winding up of trading corporations owned or controlled by such States. It is only where no such agreement has been entered into that clause (c) of article 224 will prohibit any law being made by Parliament with respect to the incorporation, regulation and winding up of trading corporations owned or controlled by such States, and carrying on business only within such States.

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that in clause (a) of article 224, for the words "right relating to posts and telegraphs" the words "matter relating to posts and telegraphs" should be substituted, as the word "right" used in this clause is not sufficiently clear.

Note : To meet this criticism the following amendment may be made in clause (a) of article 224 :

In clause (a) of article 224, for the words "any right relating to posts and telegraphs in any State or group of States for the time being specified in Part III of the First Schedule" the words "any matter affecting any right of any State or group of States for the time being specified in Part III of the First Schedule relating to posts and telegraphs in such State or group of States" be substituted.

ARTICLE 225

Comments by V. T. Krishnamachari, B. H. Zaidi, Sardar Singhji of Khetri and Sardar Jaidev Singh : The Indian States should adhere to the Constitution framed by the Constituent Assembly by the execution of an Instrument of Accession the detailed particulars of which should be set forth in the Constitution itself. We would also suggest that negotiations should be initiated without further delay for the settlement of the terms and conditions of the agreements referred to in articles 225 and 258 of the Draft Constitution.

Note: As regards accession, the process envisaged by the Drafting Committee is as follows:

To start with, Part III of the First Schedule will be blank, because we cannot assume that the Indian States will accede to the new Union before they know the shape of the new Constitution. But after the Draft Constitution, together with all amendments, has been taken into consideration by the Constituent Assembly, a reasonable period may be allowed for negotiation with the Indian States as to which of them would be prepared to accede. When the names of the acceding Indian States have been ascertained—and the Drafting Committee hopes that all those who have acceded to the Dominion of India will accede to the new Union—they will be inserted in the appropriate Part of the First Schedule and the Constitution finally passed. It is of course possible that some of the Indian States will accede subject to terms and this has been recognized in article 225 of the Draft. In order to make the position clear, in article 225 for the word “agreement” the word “instrument” should be substituted and for the words “the Government of India” the words “the Government of the Dominion of India” should be substituted. (*See amendment below.*)

The committee is also of the view that in article 225, for the words “in this Chapter” the words “in the foregoing provisions of this Chapter” should be substituted to make it clear that the provisions of articles 226 and 227 override the provisions of article 225. (*See amendment below.*)

Drafting Committee: (i) That for the words “in this Chapter” the words “in the foregoing provisions of this Chapter” be substituted. (ii) That for the word “agreement” the word “instrument” be substituted and for the words “Government of India” the words “the Government of the Dominion of India” be substituted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendments.

ARTICLE 226

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai: That article 226 be omitted.

Note: Reasons for the provision in article 226 (which gives power to Parliament to legislate with respect to a matter in the State List in the national interest upon a resolution passed by the Council of States) have been fully stated in the Constitutional Adviser's report which has been circulated to members of the Constituent Assembly. It may be pointed out—

- (a) that the power can be exercised by the Centre only when the Council of States, which represents the units of the Union, has passed the requisite resolution by a two-thirds majority;
- (b) that the resolution itself may limit the period during which the power is exercisable by the Centre.

For example, the problem of the relief of unemployment may be of national importance during a limited period; or, similarly the relief of agriculture may, during a period of depression, assume national importance. It must not therefore be assumed that the effect of a resolution is necessarily to transfer the subject in question from the State List to the Concurrent List for all time. Again, the resolution may limit itself to a particular aspect of a subject in the State List instead of extending to the whole of that subject, e.g. controlling the prices of certain agricultural products throughout India.

It is interesting to note in this connection that, under the Canadian Constitution, as interpreted by the Privy Council in 1946, in the case *Attorney-General for Ontario v. Canada Temperance Federation*—

if the subject matter of the legislation is such that it goes beyond local or provincial concern or interests and must from its inherent nature be the concern of the Dominion as a whole, then it will fall within the competence of the Dominion Parliament as a matter affecting the peace, order and good government of Canada though it may in another aspect touch on matters specially reserved to the Provincial Legislature,

so that in Canada, subjects which are of national concern may, in accordance with this decision, be dealt with by the Centre even without any special resolution such as is provided for in the Draft of the Indian Constitution.

The Special Committee also considered this article and its views are given in the note on the amendments proposed by the Drafting Committee under this article.

M. Venkatarangaiya criticizes this article on the ground that it is out of place in a federal system and that the provision of article 304 relating to the amendment of the Constitution would lose all its significance if article 226 is retained.

Note: Attention is invited in this connection to the amendments of the Drafting Committee and also of Santhanam and others and notes thereon.

Jaya Prakash Narayan: Articles 226 and 228 should be dropped.

Note: The comments on the amendments by K. Santhanam and others in respect of articles 226 and 228 will also apply to this amendment. The reasons for the insertion of the provisions contained in article 226 have been already explained in those notes.

The Ministry of Industry and Supply has expressed its agreement with the views of Alladi Krishnaswami Ayyar on articles 226 and 228 as given in the Appendix to the Draft Constitution*.

Note: The Drafting Committee felt that it was not necessary to go quite so far as to put any subject which has assumed national importance or has

*See Vol. III, Doc. No. 6, Appendix, p. 677.

become one of national interest in the Union List rather than in the Concurrent List as has been suggested by Alladi Krishnaswami Ayyar; for, even if the subject is put on the same footing as a Concurrent List subject, the result will be that the Centre can legislate on it and that legislation will prevail over any repugnant Provincial legislation. This is sufficient to meet the requirement of the case. To go further will be an unnecessary encroachment on the provincial sphere.

Drafting Committee: That article 226 be renumbered as clause (1) of article 226; and (a) at the end of the said clause as so renumbered, the words "while the resolution remains in force" be added; (b) to the said clause as so renumbered, the following proviso be added:

Provided that no such resolution shall be moved in the Council of States without prior consultation with the Governments of the States which will be affected by the proposal contained in the resolution.

That after clause (1) of article 226 as so renumbered, the following clauses be added:

(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding three years as may be specified therein:

Provided that the duration of any such resolution may be extended from time to time by a resolution, passed in like manner as the original resolution, for a further period not exceeding three years at a time.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Note: The Special Committee was of opinion that article 226 should be retained subject to the following modifications:

(a) It should be provided in this article that the resolution to be passed by the Council of States shall specify the period during which Parliament shall have power to make laws with respect to the matters referred to in that article and such period shall not exceed three years but that it would be competent to extend this period for a further period of not more than three years at a time by a fresh resolution passed by the Council of States in like manner.

(b) It should also be provided in this article that the resolution shall not be moved in the Council of States without prior consultation with the Governments of the States concerned.

The proposed amendments give effect to the views of the Special Committee.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendments.

ARTICLE 228

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in article 228, for the words and figures "articles 226 and 227" the word and figure "article 227" be substituted.

Note : If article 226 is retained, this amendment is unnecessary.

ARTICLE 229

T. A. Ramalingam Chettiar : That in clause (2) of article 229, for the words "but shall not" the words "and may" be substituted.

Note : This amendment seeks to give power to a State to amend or repeal by an Act of the Legislature of that State any Act passed by Parliament on a resolution by one or more States (including such State) giving authority to Parliament to legislate for such State or States with respect to a matter in the State List. The Drafting Committee however was of the view that such power should not be given to the Legislatures of the States. This amendment thus involves a question of policy. If, however, this amendment is accepted then it should be redrafted as follows :

For clause (2) of article 229 the following clause be substituted :

(2) Any Act so passed by Parliament may, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Tajamul Husain : That in clause (2) of article 229, for the words "but shall not" the words "and may also" be substituted.

Note : This amendment seeks to give power also to a State to amend or repeal by an Act of the Legislature of that State any Act passed by Parliament on a resolution by one or more States (including such State) giving authority to Parliament to legislate for such State or States with respect to a matter in the State List. The Drafting Committee was of the view that such power should not be given to the Legislatures of the States, and attention is invited in this connection to the footnote to article 229 of the Draft Constitution. This amendment thus involves a question of policy. If concurrent powers to amend or repeal such an Act are given to Parliament and the Legislatures of the States, then questions may arise as to which of the amendments shall prevail. Accordingly, if this amendment is accepted it would be necessary to add the following proviso to clause (2) of article 229 :

Provided that any law so made by the Legislature of a State shall not be valid unless it has been reserved for the consideration of the President and has received his assent, but nothing in this proviso shall prevent Parliament from enacting at any time any law adding to, amending or repealing the law so made by the Legislature of a State.

ARTICLE 230

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That the following proviso be added to article 230 :

Provided that if any such law relates to a matter included in the State List, it shall be valid only to the extent that it is essential to implement the treaty, agreement or convention.

Note : This amendment is hardly necessary, as the power conferred by article 230 may be exercised only in so far as the exercise of such power is necessary to implement the treaty, agreement or convention.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in article 230, the words "for any State or part thereof" be deleted.

Note : The purpose of this amendment can be better achieved by the following amendment :

In article 230, for the words "any State or part thereof" the words "the whole or any part of the territory of India" be substituted.

The amendment may be accepted in this revised form.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 231

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That clause (2) of article 231 be deleted.

Note : If this amendment is accepted, then the Legislatures of the States will hardly have any power to make laws with respect to any matter enumerated in the Concurrent List with regard to which any provision exists in any earlier law made by Parliament or in any existing law with respect to that matter, as the expression "repugnant" has sometimes been construed very widely. This would unduly restrict the powers of the Legislatures of the States to make laws with respect to matters in the Concurrent List. This amendment should not therefore be accepted.

T. A. Ramalingam Chettiar : That in clause (2) of article 231, the words "if it has been reserved for the consideration of the President and has received his assent" be deleted.

Note : If this amendment is accepted, then clause (2) of article 231 would conflict with the provisions of clause (1) of that article, for clause (1) of article 231 provides that the law made by Parliament or the existing law shall prevail. This amendment cannot therefore be accepted.

ARTICLE 232

The Editor of the Indian Law Review and some other members of the

Calcutta Bar have suggested that the heading "Restriction on Legislative Powers" to article 232 should be deleted.

Note: The Drafting Committee has also recommended the deletion of this heading. See Drafting Committee's amendment and note thereon.

Drafting Committee: That the heading to article 232 "Restriction on Legislative Powers" be omitted.

Note: In accordance with the recommendation of the Drafting Committee, the heading to article 232 "Restriction on Legislative Powers" is proposed to be omitted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ADMINISTRATIVE RELATIONS

ARTICLE 233

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai: That in article 233, after the word "Parliament" the words "in accordance with such principles of distribution as may be prescribed" be inserted.

Note: This amendment is hardly necessary. "Laws made by Parliament" can only mean valid laws; and laws not made in accordance with the Constitution would not be valid laws.

Comments by V. T. Krishnamachari, B. H. Zaidi, Sardar Singhji of Khetri and Sardar Jaidev Singh: In article 233 there should be a provision that in the exercise of the executive authority of the Union in any State regard shall be had to the interests of that State. A similar provision is to be found in the Government of India Act, 1935, which was applicable to the Provinces as well as to the States. There is no reason why it should not be repeated in the new Constitution.

Note: The Drafting Committee accepted the suggestion made above and the proposed amendment below gives effect to it.

Drafting Committee: That article 233 be renumbered as clause (1) of article 233, and after clause (1) of article 233 as so renumbered, the following clause be added:

- (2) Without prejudice to any of the other provisions of this Chapter, in the exercise of the executive power of the Union in any State regard shall be had to the interests of that State.

ARTICLE 234

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai: That in clause (2) of article 234, the following new

proviso be inserted before the existing proviso :

Provided that the Union shall contribute such share of the expenses of such construction and maintenance as may be agreed upon between the Governments of the State and the Union or in case of disagreement as may be determined by an arbitrator appointed by the Chief Justice of India.

Note : The Drafting Committee has considered the question of contribution by the Union of a share of the expenses of the construction and maintenance of means of communication declared to be of national or military importance and has recommended the addition of a new clause (3) to article 234 providing for the payment by the Government of India of costs which have been incurred by the State in excess of those which would have been incurred in the discharge of the normal duties of the State if a direction had not been given under clause (2) of article 234. This amendment is not therefore necessary.

Drafting Committee : That the following new clause be added to article 234 :

(3) Where by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last preceding clause of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

Note : The Drafting Committee was of the view that when any direction was given to a State by the Union as to the construction or maintenance of any means of communication under clause (2) of article 234, there should be a provision on the lines of clause (3) of article 235 for payment of extra costs incurred by the State in carrying out such directions. The Drafting Committee accordingly recommended this amendment in article 234.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 238

Drafting Committee : That in the proviso to article 238, for the words "under the terms of any agreement entered into in that behalf by such State with the Union" the words "under the terms of any instrument entered into in that behalf by such State with the Government of the Dominion of India or of any law made by Parliament under article 2 of this Constitution" be substituted.

Note: The terms referred to in the proviso to clause (3) of article 238 may be either the terms of an instrument entered into by a State in Part III of the First Schedule with the Government of the Dominion of India before the commencement of the Constitution or the terms laid down in any law made by Parliament under article 2 of the Constitution after such commencement. Accordingly, this amendment is suggested in article 238 to make the position clear.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the following revised draft proviso:

Provided that the provisions of clauses (1) and (3) of this article shall not apply to public acts, records and judicial proceedings of, and the final judgment or order delivered or passed by civil courts in, any State for the time being specified in Part III of the First Schedule unless Parliament has, under the terms of any instrument or agreement entered into in that behalf by such State with the Government of the Dominion of India or the Government of India or of any law made by Parliament under article 2 of this Constitution, power to make laws with respect to the matters enumerated in entries 2, 4 and 5 of the Concurrent List.

ARTICLE 239

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai: (i) That in article 239, for the words "in any State" the words "in any other State" be substituted and in clause (a) of the same article after the word "passed" the words "by that other State" be inserted. (ii) That in clause (b) of article 239, the words "in that other State" be inserted after the word "authority".

Note: There is no objection to the insertion of the word "other" before the word "State" in article 239 although the word "State" in the context can only mean "other State". But the other amendments suggested in clauses (a) and (b) of article 239 would not be correct as in the case of a State in Part II of the First Schedule the executive action or the legislation might have been taken or passed by the Government of India or the Union Parliament. There is also the possibility that the source is in State A, the action complained of is by State B, and the complainant is State C.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided that for the words "in any State" the words "in any other State" be substituted.

ARTICLE 240

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai: That in clause (1) of article 240, the words "and request that Commission" be deleted.

Note: This is a drafting amendment. There is no objection to its acceptance.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to redraft article 240 and also added a new clause (1-a):

240. (1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them.

(1-a) The Commission shall consist of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as the President may deem necessary for the purposes of such investigation.

ARTICLE 241

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai: That in article 241, for the words "in any State" the words "in any other State" be substituted.

Note: This amendment is not necessary for the word "State" used in line 2 of article 241 refers to a State in Part II of the First Schedule, and the word "State" used in line 5 of that article refers to a State in Part I or Part III of the First Schedule.

FINANCIAL RELATIONS

ARTICLE 249

B. Gopala Reddi: That in clause (1) of article 249, the words "and such duties of excise on medicinal and toilet preparations" be deleted.

Note: The reasons for including duties of excise on medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of entry 86 of the Union List in that entry as duties leviable by the Union have been explained in the footnote to entry 86 of the Union List in the Draft Constitution. Such duties have been included in clause (1) of article 249 in view of their inclusion in the Union List.

K. Santhanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai: That in clause (2) of article 249, the words "in any financial year" and "in that year" be deleted.

Note: This amendment may be accepted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 250

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that the expression "agricultural land" used in sub-clauses (a) and (b) of clause (1) of article 250 should be defined so as to make it clear what rights in and over "agricultural land" are intended to be covered by these sub-clauses in view of the decisions under the Government of India Act, 1935 [*vide* 48, *Calcutta Weekly Notes*, p. 759; *Indian Law Review* (1945), Madras, p. 777 (781)].

Note : It is very difficult to define "agricultural land".

The Ministry of Industry and Supply has suggested that taxes on the sale, turnover or purchase of goods should be included in clause (1) of article 250.

Note : This will have the effect of transferring entry 58 in the State List in the Seventh Schedule to the Union List in that Schedule. The Expert Committee on the Financial Provisions of the Draft Constitution has recommended the inclusion of this entry in the State List. This proposal thus involves a question of policy.

ARTICLE 251

B. Gopala Reddi : (i) That in clause (1) of article 251, the words "The corporation tax and" be inserted before the words "Taxes on income other than agricultural income". (ii) That in paragraph (a) of clause (4) of article 251 the words "but does not include a corporation tax" be deleted.

Note : "Corporation tax" has been defined in sub-clause (f) of clause (1) of article 303 as a tax on income. If the suggestion contained in this amendment is accepted—this is a matter of policy for the Constituent Assembly—it may be given effect to merely by omitting the words "but does not include a corporation tax" from sub-clause (a) of clause (4) of article 251. But if it is intended specifically to include corporation taxes in article 251, then the appropriate course would be to make the following amendment in that article :

In sub-clause (a) of clause (4) of article 251, for the words "but does not include" the words "and also includes" be substituted.

T. A. Ramalingam Chettiar : That in clause (1) of article 251, for the words "other than agricultural income" the words "other than agricultural income and corporation tax" be substituted.

Note : This amendment seeks to exclude "corporation tax" from taxes on income referred to in clause (1) of article 251. By the definition of "taxes on income" in sub-clause (a) of clause (4) of article 251, "corporation tax" has been excluded from taxes on income. This amendment is therefore quite unnecessary.

K. Santhanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai : That in clause (2) of article 251, after the word "prescribed" the words "but not less than 50 per cent" be inserted.

Note : This amendment involves a question of policy. If this amendment is accepted, then it should be revised as follows :

In clause (2) of article 251, after the words "Such percentage" the words "not being less than fifty per cent" be inserted.

T. A. Ramalingam Chettiar : That in paragraph (a) of clause (4) of article 251, the words "but does not include a corporation tax" be deleted.

Note : This amendment is consequential on the amendment to clause (1) of article 251 proposed by Chettiar. The remarks on that amendment may be seen. If it is intended to exclude "corporation tax" from the operation of article 251, then the existing provisions of article 251 should be left unaltered. If however, it is intended to include "corporation tax" within the purview of article 251, then the appropriate course would be to substitute for the words "but does not include" the words "and also includes" in sub-clause (a) of clause (4) of article 251.

K. Santhanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai : That in paragraph (a) of clause (4) of article 251, for the words "but does not include" the words "and also includes" be substituted.

Note : This amendment involves a question of policy.

ARTICLE 252

K. Santhanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai : That in article 252, after the word "surcharge" the words "not exceeding 25 per cent of any such duty or tax" be inserted.

Note : This amendment involves a question of policy.

ARTICLE 253

K. Santhanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai : That in clause (1) of article 253, the words "produced in India" be inserted after the word "salt".

Note : There is no objection to the acceptance of this amendment.

Tajamul Husain : That clause (1) of article 253 be deleted.

Note : This amendment involves a question of policy. In this connection attention is invited to the footnote to article 253 of the Draft Constitution.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

B. Gopala Reddi : That clause (2) of article 253 be deleted.

Note : This amendment seeks to delete clause (2) of article 253 with the object of transferring all duties of excise to the State List. This involves a question of policy.

K. Santhanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai : That in clause (2) of article 253, the words "if Parliament by law so provides" and "whole or any part of the" be omitted.

Note : If this amendment is accepted, then the whole of the Union duties of excise other than the duties of excise on medicinal and toilet preparations mentioned in the Union List, which shall be levied and collected by the Government of India, will have to be paid to the States to which the law imposing the duties extends and distributed amongst those States in accordance with such principles of distribution as may be formulated by such law. It is doubtful if the Centre with its huge defence and other expenditure will be able to part with this important source of revenue fully. This also involves a question of policy.

T. A. Ramalingam Chettiar : (i) That in clause (2) of article 253, the words "if Parliament by law so provides" be deleted. (ii) That in clause (2) of article 253, for the words "whole or any part of" the words "whole or such part of" be substituted. (iii) That at the end of clause (2) of article 253, the following be inserted :

as Parliament may from time to time decide and until it so decides half.

Note : These amendments are not quite intelligible. The words "if Parliament by law so provides" have been sought to be deleted and it has been proposed to insert the words "as Parliament may, from time to time, decide". This would hardly make any difference. If it is, however, intended that until Parliament decides that the whole or any part of the net proceeds of the duty shall be paid to the States, half of such net proceeds shall be paid to the States, then the following amendment should be made in clause (2) of article 253 :

To clause (2) of article 253, the following be added :

Provided that until Parliament by law so provides, there shall be paid out of the revenues of India to the States to which the law imposing such duty extends, sums equivalent to fifty per cent. of the net proceeds of that duty and those sums shall be distributed among those States in accordance with such principles of distribution as may be prescribed.

Explanation : In this article, 'prescribed' has the same meaning as in article 251 of this Constitution.

Gopinath Bardoloi : That after clause (2) of article 253, the following proviso be added :

Provided that seventy-five per cent or such higher percentage as may be prescribed of the net proceeds in any financial year of the excise duty on petroleum and kerosene produced in a State shall not form part of the revenues of India but shall be assigned to that State.

In this article, "prescribed" means—

(a) until a Finance Commission has been constituted, prescribed by the President by order ;

(b) after a Finance Commission has been constituted, prescribed by the

President by order after considering the recommendations of the Finance Commission.

Note : This amendment was not accepted by the Drafting Committee. The Drafting Committee was of opinion that in view of the unstable conditions prevailing at the present moment the existing distribution of revenues under the Government of India Act, 1935, should continue for at least five years after which the Finance Commission might review the position. Saadulla (one of the members of the Drafting Committee) however pressed for the acceptance of this and the other amendments proposed by Gopinath Bardoloi. He explained that contrary to the Drafting Committee's intentions, the *status quo* had already been altered to the detriment of Assam by certain action taken by the Government of India. The committee, however, by a majority recommended that no change should be made in the Draft for the reasons explained by the Chairman of committee in paragraph 15 of his letter to the President : if Assam is aggrieved by any recent action taken by the Government of India, that is a separate matter.

Drafting Committee : That in clause (2) of article 253, after the words "as are mentioned in the Union List" the words "and export duties" be inserted.

Note : Clause (2) of article 253 follows the existing provision contained in sub-section (1) of section 140 of the Government of India Act, 1935, as adapted, with regard to the distribution of excise duties and export duties. The reference to export duties has been omitted from the said clause (2) by inadvertence. It is therefore necessary to restore the reference to export duties in the said clause if the existing distribution of revenues under the Government of India Act, 1935, is to be retained. Hence the proposed amendment.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

ARTICLE 254

Gopinath Bardoloi : That for article 254, the following be substituted :
Notwithstanding anything in article 253 of this Constitution—

(a) sixty-two and half per cent or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on jute or jute products, and

(b) seventy-five per cent or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on tea, shall not form part of the revenues of India but shall be assigned to the States in which jute or tea, as the case may be, is grown in proportion to the respective amounts of jute or tea grown therein.

In this article, 'prescribed' means—

(a) until a Finance Commission has been constituted prescribed by the President by order ;

(b) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

Note: This amendment was also considered by the Drafting Committee but was not agreed to by that committee as the committee thought it best to retain the *status quo* in the matter of distribution of revenues as explained in paragraph 15 of the letter of the Chairman of the Drafting Committee to the President of the Constituent Assembly.

K. Santhanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai : That in article 254, the words "but not less than 50 per cent" be inserted after the word "proportion".

Note: This amendment involves a question of policy. If this amendment is accepted, then it should be revised as follows:

In article 254, after the word "proportion" the words "not being less than fifty per cent" be inserted.

B. Gopala Reddi : That in article 254, for the words "of any export duty on jute or jute-products shall not form part of the revenues of India but shall be assigned to the States in which jute is grown," the words "of export duties shall not form part of the revenues of India, but shall be assigned to the States" be substituted.

Note: Article 254 deals with distribution of export duty on jute or jute products. If it is intended that the export duties on commodities other than jute or jute products should be dealt with in the same way as the Union duties of excise referred to in clause (2) of article 253, then all that is necessary is to insert the words "and export duties" after the words "mentioned in the Union List" in that clause. In clause (2) of article 253, the reference to export duties has been omitted by inadvertence. An amendment has separately been suggested for its inclusion. This amendment is, therefore, not necessary.

The Ministry of Industry and Supply has questioned the propriety of assigning a portion of the export duty on jute and jute products to the Provinces in which jute is grown and has pointed out that by the same token, the Provinces concerned may claim a share in the export duty on manganese, which as a raw material is on a par with raw jute in this matter, or on cotton cloth. The Ministry has further pointed out that the bulk of the jute products exported from India are fabricated from raw jute which is not grown in the country, and there is thus less of a case than ever before for assigning to a Province a portion of the export duty on jute products on the basis of the jute acreage in that Province.

Note: Article 254 seeks to continue the existing provisions for distribution of duty on jute or jute products under the Government of India Act, 1935.

ARTICLE 255

Gopinath Bardoloi : (i) That at the end of the first proviso to article 255

the words "the areas of the Union" be substituted for the words "the areas of that State". (ii) That the word "average" in paragraph (a) of the second proviso to article 255 be deleted. (iii) That in paragraph (b) of the second proviso to article 255, the words "areas of the Union" be substituted for the words "areas of that State".

Note : These amendments were considered by the Drafting Committee but were not agreed to by that committee. The Drafting Committee considered that the intention was to raise the level of administration of the scheduled or tribal areas in a State to that of the administration of other areas in that State. The word "average" in clause (a) of the second proviso to article 255 is necessary, because otherwise the proviso may mean that Assam is merely to get, as a lump sum, the total excess expenditure incurred during the three years preceding the commencement of the Constitution and nothing more, whereas the intention is that Assam should get a recurring sum equal to the average annual excess.

ARTICLE 256

Note : There are at present certain Provincial laws relating to taxes for the benefit of a Province or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments, which may be held to be laws relating to taxes on income and the validity in respect of which may thereby be open to challenge. The object of the new section 142-A of the Government of India Act, 1935, was to remove any possible doubt about the validity of those laws and at the same time to restrict the power of the Provincial Legislature to impose such taxes by fixing a maximum amount payable in respect of any one person to the Province or to any municipality etc. by way of taxes on professions, trades, callings and employments. The subject "Taxes on professions, trades, callings and employments" has been mentioned as entry 56 in List II (State List) of the Seventh Schedule to the Draft Constitution. Accordingly, under article 217(3) the Legislature of a State has exclusive power to make laws with respect to that subject. Clause (1) of article 256 states that this power of legislation of the Legislature of a State shall be subject to the provisions of clauses (2) and (3) of that article. It does not remove the doubts as to the validity of laws to be enacted by the State Legislatures on the subject mentioned above. It seems therefore necessary that provisions on the lines of sub-section (1) of section 142-A of the Government of India Act, 1935, should be made in clause (1) of article 256 to avoid any question being raised as to the competency of the Legislature of a State to amend or vary any existing law on the subject in future. The following amendment is accordingly suggested :

For clause (1) of article 256 the following clause be substituted :

(1) Notwithstanding anything in article 217 of this Constitution, no law of

the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

The West Bengal Municipal Association has suggested that in clause (1) of article 256 for the words "taxes on professions, trades, callings and employments", the words and figures "matters in items 50, 53 and 55 to 63 in List II of the Seventh Schedule" should be substituted, and the words "of the State or" should be deleted.

Note: This amendment is hardly necessary. The Legislature of a State has already power to make laws with respect to the matters mentioned in items 50, 53 and 55 to 63 in List II of the Seventh Schedule by virtue of the provisions of clause (3) of article 217. Such laws may provide for the imposition of taxes mentioned in those items either for the benefit of the State or of a municipality, district board, local board or other local authority therein, and it would be for the Legislature to determine if such taxes should be levied only for the benefit of a municipality, district board, local board or other local authority therein. It is hardly desirable to impose a constitutional obligation on the Legislature of the State to provide for the levy of such taxes only for the benefit of a municipality, district board, local board or other local authority in such State.

The West Bengal Municipal Association has suggested that clause (2) of article 256 should be deleted or, if this suggestion is not accepted, then the following amendments should be made in that article :

- (1) The words "to the State" be deleted.
- (2) For the words "two hundred and fifty", the words "two thousand" be substituted.
- (3) The words "save in so far as Parliament may, by law, otherwise provide" be inserted at the end.
- (4) In the proviso the words "any State or" be deleted.
- (5) In the proviso the words "within any State" be inserted after the word "authority".
- (6) In the proviso for the words "provision to the contrary is made", the words "otherwise provided" be substituted.

Note: It is hardly possible to accept these amendments. If clause (2) of article 256 is deleted, then it will be competent for a State to impose taxes in respect of professions, trades, callings and employments in the same way as taxes on income are levied under the Indian Income-tax Act, 1922, and there will thus be two taxes on income levied in the State by two different authorities. Article 256 is based on section 142-A of the Government of India Act, 1935. In view of the laws passed by certain Provincial Legislatures imposing taxes in respect of professions, trades, callings and employments

on a graduated scale varying according to income arising out of professions, trades, callings and employments, it was considered necessary to limit the total amount payable in respect of any one person to the State or to any municipality etc. by way of taxes on professions, trades, callings and employments to avoid taxation on income arising therefrom by two different authorities. Section 142-A was accordingly inserted in the Government of India Act, 1935 for the purpose of restricting the powers of the Provincial Legislatures in respect of taxes on professions, trades, callings and employments. Clause (2) of article 256 can therefore be hardly omitted.

The Drafting Committee after careful consideration fixed the sum of two hundred and fifty rupees as the maximum amount which may be levied on any one person by way of taxes on professions, trades, callings or employments by a State or any municipality, district board, local board or other local authority therein. It is hardly therefore possible to increase this amount to two thousand rupees as suggested in the alternative amendment.

ARTICLE 257

K. Santhanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai : That the words "by law" be added at the end of article 257.

Note : This amendment may be accepted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 258

Comments by V. T. Krishnamachari, B. H. Zaidi, Sardar Singhji of Khetri and Sardar Jaidev Singh : The maximum period for the currency of the agreement under this article has been reduced from fifteen years to ten years. The Union Powers Committee recommended that uniformity of taxation throughout the units might, for an agreed period of years after the establishment of the Union not exceeding fifteen, be kept in abeyance and the incidences, levy, realization and apportionment of the above taxes in the State units would be subject to agreements between them and the Union Government. There is no reason why the duration of the agreement in question should be curtailed.

Note : The Drafting Committee recommended that in clause (2) of article 258, for the words "ten years" the words "fifteen years" should be substituted.

Drafting Committee : That in clause (2) of article 258 for the words "ten years" the words "fifteen years" be substituted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 260

The West Bengal Legislative Assembly is of opinion that the Constitution should provide :

- (i) (a) that not less than 60 per cent of the net proceeds of income-tax including corporation tax and the tax on federal emoluments should go to the Provinces ;
- (b) that not less than 50 per cent of the net proceeds of the excise duty on tobacco should go to the Provinces ;
- (c) that while the proceeds of all export duties should be retained by the Centre, there shall be paid to those Provinces which have been sharing for some time the net proceeds of the export duty on jute and jute goods with the Centre, grants of fixed assignments for a period of years, say ten years ;
- (d) that the whole or part of the net proceeds of any tax that may be levied by the Centre under the residuary powers shall be distributed among the Provinces, the proportion to go to the Provinces being determined by law until altered by the President according to the advice of a standing Finance Commission ;
- (e) that the net proceeds of any Central tax on transactions in the stock exchanges and futures markets should not, like the net proceeds of Centrally levied stamp duties, form part of the revenues of the Union but should form part of the revenues of the State in which the tax is collected ;
- (ii) that the manner in which shares of Centrally levied taxes are to be distributed to the various Provinces should be determined by the President by certain set principles on the lines of the recommendations of the Expert Committee, such that in the case of income-tax the principal consideration should be the basis of collection, sufficient regard being had to the factor of population also and a fraction being set apart for mitigation of hardship to individual Provinces; that in respect of succession and estate duties the main determining principle should be the location in the case of real property and in case of other properties the residence of the deceased primarily and also population, and that in the case of excise duty on tobacco the principle of distribution should be based mainly on estimated consumption in a particular area;
- (iii) that the minimum subventions payable to the needy Provinces should be stated in the Constitution, any additional subvention being determined by the President on the basis of the result of an *ad hoc* enquiry for the first five years and thereafter on the recommendation of the Finance Commission ;
- (iv) that the Finance Commission as contemplated in article 260 should be an expert body commanding public confidence and should be

appointed as soon as possible and should be a permanent body. Besides discharging the functions given to it under article 260 of the Draft Constitution, it shall carry on continuous study and research and shall also examine and report on such applications for grants-in-aid from Provinces as may be referred to it by the President from time to time.

Note : It appears from the proposals of the West Bengal Legislative Assembly that the object is mainly to give effect to the recommendations of the Expert Committee on the Financial Provisions of the Constitution. The Special Committee has already considered this question and has expressed the view that the provisions recommended by the Expert Committee for inclusion in the Constitution should be shown as alternatives in the Draft where such provisions have not been accepted by the Drafting Committee and embodied in the Draft. (See draft alternative articles 249 to 255, 259 and 260 framed by the Drafting Committee to give effect to the recommendations of the Expert Committee and note thereon, *infra*.)

The proposal of the Assembly that the net proceeds of any central tax on transactions in the stock exchanges and futures markets should not form part of the revenues of the Union but should form part of the revenues of the State in which the tax is collected is new and does not form part of the recommendations made by the Expert Committee. It involves a question of policy.

Gopinath Bardoloi : That in clause (1) of article 260, the words "the expiration of five years from" be deleted.

Note : This amendment was considered by the Drafting Committee and was not agreed to by that committee. The Drafting Committee has, however, recommended certain amendments in clause (1) of article 260 for enabling the President to constitute a Finance Commission as soon as practicable but not later than the expiration of five years from the commencement of the Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary.

Drafting Committee : That the following be substituted for clause (1) of article 260 :

(1) The President shall, *as soon as practicable but not later than the expiration of five years* from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

Note : See notes on Bardoloi's amendment.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ALTERNATIVE PROVISIONS TO GIVE EFFECT TO THE RECOMMENDATIONS OF THE
EXPERT COMMITTEE ON FINANCIAL PROVISIONS

Drafting Committee: That the following articles be substituted for articles 249 to 255, 259 and 260 :

249. *Certain succession duties:* (1) Duties in respect of succession of property other than agricultural land and estate duty in respect of property other than agricultural land shall be levied and collected by the Government of India, but sixty per cent or such higher percentage as may be prescribed of the net proceeds in any financial year of any such duty, except in so far as those proceeds represent proceeds attributable to (States for the time being specified in Part II of the First Schedule)/(the territory for the time being specified in Part IV of the First Schedule), shall not form part of the revenues of India, but shall be assigned to the States within which that duty is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be prescribed.

(2) If any dispute arises as to the distribution of the net proceeds of any such duty among the States, it shall be referred for decision to such authority as may be appointed in this behalf by the President and the decision of such authority shall be final.

250. *Certain terminal taxes:* Terminal taxes on goods or passengers carried by railway or air shall be levied and collected by the Government of India, but the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to (States for the time being specified in Part II of the First Schedule)/(the territory for the time being specified in Part IV of the First Schedule), shall not form part of the revenues of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be prescribed.

251. *Certain stamp duties:* Such stamp duties as are mentioned in the Union List shall be levied by the Government of India and collected, in the case where such duties are leviable within (any State for the time being specified in Part II of the First Schedule)/(the territory for the time being specified in Part IV of the First Schedule), by the Government of India and in other cases, by the States within which such duties are respectively leviable, but the proceeds in any financial year of any such duty leviable in that year within any State shall not form part of the revenues of India, but shall be assigned to that State.

252. *Taxes on Income:* (1) Taxes on income other than agricultural income shall be levied and collected by the Government of India, but sixty per cent or such higher percentage as may be prescribed of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to (States for the time being specified in

Part II of the First Schedule)/(the territory for the time being specified in Part IV of the First Schedule), shall not form part of the revenues of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in such manner as may be prescribed :

Provided that Parliament may, at any time, increase the said taxes by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the revenues of India.

(2) In this article, "taxes on income" includes any sum levied by the Government of India in lieu of any tax on income as referred to in clause (a) of the proviso to article 266 of this Constitution but does not include any contributions levied by the Government of India in respect of its own undertakings.

253. *Salt duties and excise duties* : (1) No duties on salt shall be levied by the Union.

(2) Union duties of excise shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the revenues of India to the States to which the law imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among those States in accordance with such principles of distribution as may be prescribed :

Provided that fifty per cent or such higher percentage as may be prescribed, of the net proceeds in any financial year of the excise duty on tobacco, except in so far as those proceeds represent proceeds attributable to (States for the time being specified in Part II of the First Schedule)/(the territory for the time being specified in Part IV of the First Schedule), shall not form part of the revenues of India but shall be assigned to the States within which that duty is leviable in that year, and shall be distributed among those States in such manner as may be prescribed.

254. *Taxes not mentioned in any of the Lists in the Seventh Schedule* : If any tax not mentioned in any of the Lists in the Seventh Schedule is imposed by Parliament by law by virtue of entry 91 of the Union List, such tax shall be levied and collected by the Government of India, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as the proceeds represent proceeds attributable to (States for the time being specified in Part II of the First Schedule)/(the territory for the time being specified in Part IV of the First Schedule), shall not form part of the revenues of India but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be prescribed.

255. *Grants in lieu of jute export duty* : Until the abolition of the export duty levied by the Government of India on jute and jute products or the

expiration of ten years from the commencement of this Constitution, whichever is earlier, there shall be charged on the revenues of India in each year as grants-in-aid of the revenues of the States mentioned below the sums respectively specified against those States :

State	Sum
West Bengal	100 lakhs of rupees
Bihar	17 lakhs of rupees
Assam	15 lakhs of rupees
Orissa	3 lakhs of rupees

255-A. *Grants from the Union to certain States* : Such sums as the President may, on the recommendation of the Finance Commission, by order fix shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as the President may on such recommendation determine to be in need of assistance, and different sums may be fixed for different States :

Provided that there shall be charged on the revenues of India as grants-in-aid of the revenues of a State for the time being specified in Part I of the First Schedule such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas in that State to that of the administration of the rest of the areas of that State :

Provided also that there shall be paid out of the revenues of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

(a) the average excess of expenditure over the revenues during the three years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 19 of the Sixth Schedule ; and

(b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

259. *Definition of 'prescribed' and calculation of 'net proceeds' etc.* : (1) In the foregoing provisions of this Chapter—

(a) 'prescribed' means—

(i) until the Finance Commission has been constituted, prescribed by the President by order; and

(ii) after the Finance Commission has been constituted, prescribed by the President by order on the recommendation of the Finance Commission ;

(b) 'net proceeds' means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision in this Chapter, any order of the President may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

260. *Finance Commission* : (1) There shall be a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President in his discretion.

(2) The Chairman shall be a person who holds or has held judicial office not inferior in rank to that of a judge of a High Court.

(3) The members of the Commission shall receive such remuneration as the President may by order determine and shall hold office for a term of five years and may on the expiry of such term be reappointed for another term of five years.

(4) It shall be the duty of the Commission to perform the functions conferred on the Commission by this Constitution or by any other law for the time being in force and to give advice to the Government of India upon such financial matters or to perform such other duties of a financial character as may from time to time be referred or assigned to them by the President.

(5) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the President may by order confer on them.

Note : The Expert Committee on the Financial Provisions of the Constitution had in its report made certain recommendations on the financial relations between the Centre and the units and more particularly on the distribution of certain heads of revenue between the Centre and the units. The Drafting Committee did not agree with some of the recommendations of the Expert Committee and made its own proposals in the Draft Constitution of February 1948. The Special Committee was of opinion that the provisions recommended by the Expert Committee should be shown as alternatives in the Draft where such provisions had not been accepted by the Drafting Committee and embodied in the Draft. Accordingly, for facility of reference those proposals made by the Expert Committee which had not been accepted by the Drafting Committee were shown as Appendix II in the reprinted Draft (indicating the recommendations of Drafting Committee) published in October, 1948.

ARTICLE 264

The West Bengal Municipal Association suggested—

(a) that for article 264 the following article should be substituted :

264. The property of the Union shall, save in so far as Parliament may by law otherwise provide, be as much liable to all taxes imposed by any local authority within a State as any property of an individual ;

(b) that if the above amendment cannot be agreed to, then for the proviso to article 264 the following proviso should be substituted :

Provided that until Parliament by law otherwise provides, any property of the Union shall be liable to pay any tax or class of tax to which such properties immediately before the thirty-first day of March, 1939, were liable.

The Government of Bombay suggested that the existing anomalous position in the Government of India Act, 1935, with regard to the levy of taxes on Central Government properties might be corrected by making a suitable provision in the new Constitution Act enabling the local bodies to levy taxes on Central Government properties to the same extent as they are levied on the properties belonging to the Provincial Governments.

The Municipal Commissioner of the Bombay Municipality pointed out that under section 154 of the Government of India Act, 1935, on which article 264 of the Draft Constitution is based, properties belonging to the Central Government which were liable to be assessed to municipal taxes before the commencement of Part III of that Act, continued to be so liable even after such commencement. But it was being contended that buildings erected by or on behalf of the Central Government after the first day of April 1937 which was the date of commencement of Part III of the Government of India Act, 1935, were not liable to municipal taxes under that section as the Central Government had not passed any legislation making them liable (as contemplated in that section). He has further stated that such a contention has led to an anomaly in that, while all properties belonging to the Provincial Government (whether existing before or after the first day of April 1937) were liable to the taxes, only such properties belonging to Central Government as were in existence prior to 1st April 1937 were considered as liable, and that this difference in treatment not only among two classes of properties belonging to the Central Government but also among properties belonging to the Provincial Government and the Central Government could never have been intended by Government, and that it would not also be fair to the Municipality to make such a distinction.

Note : These amendments involve questions of policy. It will be hardly possible to treat the properties of the Union on a par with the properties of a State in so far as levy of taxes on such properties by, or by any authority within, the State is concerned. However, to remove the anomaly pointed out by the Municipal Commissioner of the Bombay Municipality the following

amendment may be made in article 264 :

In the proviso to article 264, for the words "any property" the words "any property or class of property" be substituted.

It is hardly possible to replace the word "tax" in the proviso to article 264 by the words "tax or class of tax" so that if any tax is enhanced after the commencement of the Constitution, the property of the Union which was immediately before such commencement liable or treated as liable to such tax would be also liable or be treated as liable to the tax as so enhanced, for any such enhancement of the existing tax would really amount to fresh taxation by, or by any authority within the State.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment. The committee also decided to recommend the addition of the following explanation :

Explanation : For the purposes of this article, the property of the Union shall include any article, commodity or goods produced or manufactured by any agency employed by the Government of India or by any corporation by operations carried out under any law made by Parliament.

ARTICLE 266

B. Gopala Reddi : (i) That in article 266 after the words "income accruing, arising or received" the words "or trade or business of any kind carried on" be inserted. (ii) That paragraph (a) of the proviso to article 266 be deleted. (iii) That the Explanation to article 266 be deleted.

Note : These amendments seek to exempt Governments of States from Union taxation in respect of trade or business carried on within the territory of India. Even the Government of India Act, 1935, did not go so far. Section 155 of the Government of India Act, 1935, provides that profits from trade or business carried on by a Provincial Government would be taxable if the trade or business was carried on outside the Province. The provisions of article 266 are based on the recommendations of the Expert Committee on the Financial Provisions of the Union Constitution and it is now for the Constituent Assembly to decide whether the provisions contained in clause (a) of article 266 should be retained.

Gopinath Bardoloi : That paragraph (a) of the proviso to article 266 and the brackets and letter "(b)" of the second paragraph be deleted.

Note : The remarks on the amendments proposed by Gopala Reddi would also apply to this amendment. This amendment was considered by the Drafting Committee but was not agreed to.

K. Sthanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai : That in paragraph (a) of the proviso to article 266, after the words "Union tax or" the words "by agreement between the Government of the Union and the State" be inserted.

Note : The law imposing the tax may provide for the levy of a sum in

lieu of such tax and it is not understood why an agreement between the Government of the Union and of the States should be insisted on in every case as proposed by this amendment. The levying of the Union tax does not require the agreement of the States and it seems illogical to require such agreement if the Union decides to levy a sum in lieu of tax. In either case, the law levying the tax or sum will have to be passed also by the Council of States which represents the units of the Union, and so there is hardly any necessity for such an agreement.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in the Explanation to article 266, after the words "any jail within a State" the following be inserted :

or the manufacture of vaccines in any hospital or institute maintained by the State or the production by the State of improved tools for agriculture or cottage industries or the purchasing, storing and selling of agricultural products for the purpose of regulation and control of production, marketing and prices of such products.

Note : The mere manufacture or production of any article by the State does not of itself come under the purview of clause (a) of the proviso to article 266 unless the manufacture or production is for the purpose of trade or business. In the Explanation to article 266, operations incidental to the ordinary functions of the Government of a State have been exempted from the purview of the proviso and the sale of the forest produce has been cited in the Explanation by way of illustration only. This amendment is therefore hardly necessary. If, however, this amendment is accepted, then it should be redrafted as follows :

In the Explanation to article 266, after the words "any jail within a State" the following be inserted :

or of any vaccines manufactured in any hospital or institute maintained by the State or of any tools manufactured by the State for their use for agriculture or of the products of cottage industries under the control of the State or of any agricultural products for the purpose of regulation and control of marketing and prices of such products.

NEW ARTICLE 266-A*

Letter from Abul Kalam Azad, Minister for Education, April 28, 1948 : I am sure you will agree with me that all our plans for the development of free India will ultimately depend upon the quality of our human material. Whether it is industrial expansion or issues relating to defence, in every case the governing factor will be the type of individual who carries out the schemes. For the proper training of individuals, education is essential.

*See article 277 and also new entry 40-A of List I and entry 18 of List II of the Seventh Schedule.

This is more so in India, as we have to make up for the tremendous leeway from which we suffer on account of the past bondage. Education should, therefore, be a first priority of the National Government, as I am afraid that, unless this is done, necessary provision for educational facilities will not be made. Experience has shown that when the State wants, it can find the money. Thus during a war, the national budget is always extended to undreamt of proportions to meet the war emergency. My suggestion is that education should also be regarded in the same light.

The second point to which I would draw your attention is that in the present state of development of education in India it is imperative that there should be Central guidance, if not Central control, on Provincial progress. You have yourself seen the dangerous symptoms of fissiparous tendencies in the recent months. If it can be secured that education throughout India follows the same general pattern, we can be sure that the intelligentsia of the country will be thinking on similar lines. This would be a better check against the dangers of fragmentation than any centralization of Government or concentration of power in the hands of the Central Authority.

I find from the new Constitution which has been accepted by China, that they have made very adequate and clear-cut provision for securing that education should be both national and adequately financed. I would, therefore, suggest for your consideration that we may make provision on similar lines in the Constitution of India also. I would draw your attention especially to article 162 and article 164 of Chapter 13, section 5 of the Constitution of the Government of China, which I am enclosing* for your perusal.

I would, therefore, propose that the following two amendments be incorporated in the Constitution :

- (1) All public and private educational and cultural organizations in the Indian Union shall be subject to the supervision of the Union Government in accordance with law.

Explanation : It will be noticed that the Union Government will reserve to itself only general supervision, while all matters of administration and management will be under the control of the State Government.

- (2) Expenses for education, sciences and culture shall not be less than 15 per cent of the total budget estimates in the case of the Central Government, not less than 25 per cent of the total amount of the budget estimates in the case of State Governments and not less than 35 per cent of the total amount of the budget estimates in the case of local authorities.

I hope that these amendments may be discussed by the Constitution Sub-Committee and put up before the Constituent Assembly in due course. In case you would like to discuss with me any of these amendments, I will be glad to do so at your convenience.

*Not reproduced.

Note : The amendments suggested above involve questions of policy. If the suggestion with regard to the reservation of general supervision by the Union Government over all public and private educational and cultural organizations within the territory of the Union be accepted, then it will be necessary to insert a new item in the Union List which will give power to the Union Parliament to make laws with respect to the exercise of such general supervision.

The provision relating to the minimum estimates of expenditure for education to be shown in the budget estimates of the Union and the State Governments, if inserted in the Constitution as proposed by the Ministry of Education, may create difficulties in times of emergency when both the Union and the State Governments may have to face abnormal financial difficulties. It is accordingly suggested that power should be also provided in article 277 of the Constitution for suspension of this provision by the President during an emergency.

As regards the provision for such minimum estimates of expenditure for education by local authorities in the budget estimates of such authorities, the proper course would be to make the necessary provision by Acts of the appropriate Legislatures, so that non-compliance with such provision may attract the sanctions contained in the Acts relating to such authorities.

If the suggestions made by the Ministry of Education are accepted, then the following amendments would be necessary :

(1) In List I (Union List) in the Seventh Schedule, after entry 40, the following entry be inserted :

40-A. Supervisory control by the Union of educational institutions within the territory of India where such control is declared by Parliament by law to be expedient in the public interest. (See the new entry 40-A proposed by the Drafting Committee.)

(2) After article 266, the following article be inserted :

(See the Drafting Committee's amendment below.)

The following consequential amendments would also be necessary :

In article 277, after the words and figures "articles 249 to 259" the words and figures "and article 266-A" be inserted. (See the Drafting Committee's amendment to article 277.)

To entry 18 of List II (State List) in the Seventh Schedule, the following be added :

subject to the provision of entry 40-A of List I. (See the Drafting Committee's amendment to entry 18 of List II.)

NEW ARTICLE 266-A

Drafting Committee : That after article 266, the following article be inserted:

266-A. Provisions with respect to expenditure for education in the annual financial statements of the Union and the States and the budget estimates

of local authorities : (1) Not less than fifteen per cent of the total estimates of expenditure embodied in the annual financial statement laid before the Houses of Parliament under article 92 of this Constitution and not less than twenty-five per cent of the total estimates of expenditure embodied in the annual financial statement laid before the legislature of any State under article 177 of this Constitution shall represent the sums required to meet expenditure for education.

(2) Provision shall be made by Acts of the appropriate Legislatures to ensure that not less than thirty-five per cent of the total estimated annual expenditure of every municipality, district board, local board, or other local authority within any State for the time being specified in Part I or Part II of the First Schedule represents the sums required to meet expenditure for education.

ARTICLE 269

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in clause (2) of article 269, after the words "Government of India may" the words "with the approval of Parliament and" be inserted.

Note : This involves a question of policy. If it is decided to accept this amendment, then it should be redrafted as follows :

To clause (2) of article 269 the following proviso be added :

Provided that no loan shall be made to any such State unless the proposal to make the loan and the conditions subject to which it is proposed to make the loan have been previously approved by resolutions passed by both Houses of Parliament.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided that in clause (2) of article 269 for the words "if any, as it may think fit to impose" the words "as may be laid down by or under any law made by Parliament" be substituted.

ARTICLE 270

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that the words "or by reason of the creation of new States or changes in the boundaries of existing States" should be added at the end of article 270.

Note : This amendment is hardly necessary as article 270 provides for the succession to the assets and debts, rights and liabilities of the Dominion of India and of the Governors' Provinces during transition from the provisions of the Government of India Act, 1935, to the provisions of the new Constitution. When new States are created or the boundaries of existing States altered the law made by Parliament under article 2 or article 3 of the

Constitution will contain provisions for apportionment and adjustments of and in respect of assets and liabilities and other incidental and consequential matters (*vide* article 4).

ARTICLE 271

Drafting Committee: That in article 271, the words "for the purposes of the Government of that State", in the two places where they occur, be omitted. (ii) That in article 271, the words "for the purposes of the Government of India," in the two places where they occur be omitted.

Note: The words "for the purposes of the Government of India" and "for the purposes of the Government of that State" used in article 271 are hardly necessary and it is accordingly proposed to omit them.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 271-A

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to add the following new article 271-A :

271-A. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.

See notes under entry 42-A of Union Legislative List (List I of Seventh Schedule).

ARTICLE 274

Drafting Committee: (i) That in clause (1) of article 274, for the words "Government of India" in the second place where they occur, the words "Union of India" be substituted. (ii) That in sub-clause (a) of clause (2) of article 274, for the words "Government of India" the words "Union of India" be substituted.

Note: It would be better to substitute "Union of India" for "Government of India" as the entity to sue and to be sued. In the *Columbian Government v. Rothschild* (1 Sim. 94), it was held that an unknown and undefined body such as "the Government" of a State could not sue under such a name and that if the persons so described could sue at all, they must come forward as individuals and show that they were entitled to represent the State. It is therefore better to sue (and be sued) in the name of the State itself. We are following this course in the case of the States.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

ARTICLE 274-A

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to add the following new article 274-A:

274-A. (1) The right to institute any legal proceedings, whether civil or criminal, against any person serving the Government of India or the Government of a State in respect of any act done or purporting to be done by such person in his official capacity may be regulated by law but shall not be taken away.

(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent Parliament or the Legislature of a State from making any law indemnifying persons serving the Government of India or the Government of the State, as the case may be, for acts done by such persons in good faith.

MEMORANDUM FROM THE GOVERNMENT OF ASSAM ON THE FINANCIAL PROVISIONS OF THE DRAFT CONSTITUTION

1. The Government of Assam cordially welcome the provision under article 255 of the Draft Constitution which says that special assistance in the form of grants-in-aid is to be given to the Province of Assam in respect of the administration of tribal areas and the Scheduled Tribes. Apart from the sums to be paid towards the cost of approved schemes intended to promote the welfare of the Scheduled Tribes which by the way form an integral part of the provincial post-war schemes, the assistance which is likely to be of consequence to the provincial finances is that proposed for covering the deficit in tribal areas and for raising the administrative standard of these areas. But when the current provincial standard itself is behind the general standard obtaining in the rest of India, a fact to which repeated attention had been drawn in the several memoranda submitted by the Government, the proper measure of the amount of assistance required is not the average deficit in the areas during the three years preceding the commencement of the Constitution or the gap between the administrative level in these areas and that in the rest of the Province. In the opinion of this Government the grants under this article should be such as to enable the Province to provide the normal Indian standard of services. Such grants can only be determined after a comparative study of administrative standards by an expert body and it is therefore proposed that for article 255, the following should be substituted:

Such sums as Parliament may by law provide shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the revenues of India as grants-in-aid

of the revenues of a State for the time being specified in Part I of the First Schedule such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of the administration of the rest of the areas of the Union :

Provided further that there shall be paid out of the revenues of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

(a) the excess of expenditure over the revenues during the three years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 19 of the Sixth Schedule and

(b) the cost of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of the Union.

Also substitute the following for clause (1) of article 260 :

The President shall at the commencement of this Constitution and thereafter at the expiration of every fifth year or at such other time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

2. As regards the general allocation of revenues between the Union and the States this Government notes that practically the same system has been proposed as is current under the Government of India Act, 1935. Thus the Provincial Governments under this scheme will continue to collect the revenues which they have been assigned under the Government of India Act. So far as this Province is concerned it means that her financial position will remain what it is unless something is done to give her a share of the revenues collected by the Union. Having already exhausted the entire field of taxation reserved for her and touched the normal Indian standard in the severity of taxation, and yet being unable to provide the normal Indian standard of services to the people, Assam is compelled to look to revenue sharing as the only source of relief. From statistics relating to the revenue of the provinces during the ten years from 1937-38 to 1946-47, it will be seen that while the *per capita* revenue for all the provinces taken together was Rs. 4-9-0, the corresponding figure for Assam was Rs. 4-3-0 when it is remembered that Assam was among the first to impose a tax on agricultural income and that the range of taxes introduced by her is as wide as, if not wider than, that obtaining elsewhere in India, the severity of the ordeal to which this Province has subjected herself just to attain balance in her budget becomes apparent. Leaving out the tribal areas where habitation is thin

and cultivation is sparse, the average incidence of land revenue per thousand square miles works out to Rs. 5,16,883 against Rs. 3,67,555 for all the provinces together.

As estimated in the budget for the next year the total receipts from provincial heads will amount to 356 lakhs. Even this amount is likely to fall in the next few years when the return of normal conditions affect the revenues under Forests and Excise. On the other hand, the basic revenue expenditure which is estimated at Rs. 630 lakhs in the next year's budget is the very minimum below which governmental expenditure cannot fall in this Province. If anything it will rise with the raising of the pay scales of low paid Government servants, a question which has become one of first rate importance after the publication of the Report of the Central Pay Committee. Moreover certain institutions (the University of Gauhati, the High Court, the Medical College and several technical colleges) have been recently set up to remove a long-felt want in the Province. Thus apart from the cost of post-war schemes, the expenditure of the Government of Assam during the next few years, it is expected, will range round about 800 lakhs. As against this the Province will have the following revenues :

Receipts from provincial heads	356 lakhs
Receipts from the provincial share of income-tax	113 „
Receipts from the jute export duty	29 „
	<hr/>
TOTAL	498 „

There will roughly be a deficit of 300 lakhs on revenue account.

3. This Government has always been of the opinion that the circumstances of Assam are special and that no financial arrangement which ignores this fact is likely to suit her. In the Draft Constitution no special provision, apart from the one relating to grants for tribal areas and Scheduled Tribes, seems to have been made. This means that Assam shall have to wait till the Union Centre is able to part with substantial resources for being shared with all the units, or till the Union Parliament by a majority decides that a share of the excise duties is to be distributed among the units. Even the share of the jute export duty which is to be assigned to the jute growing provinces under article 254 is to be determined by the Parliament by law. All this betrays a tendency to ignore Assam's right to special treatment. By failing to provide for the assignment of the share of the export duty on tea under article 254 and a share of the excise duty on petroleum and kerosene under article 253(2) the authors of the Draft have tried to treat Assam on a par with the rest of the provinces. Yet the record of this Province in respect of the extent and severity of taxation and of the level of administrative services has been such as to mark her out for special treatment. Even the taxes which she wants to share with the Centre are such as to justify a special treatment. The export duty on tea, like the export duty on jute,

is realized primarily on the products of a particular area, and is thus a fit revenue to be shared with that area when there is special need for it. As regards the excise duty on petroleum and kerosene, there are grounds to show that this tax is not like other excise taxes. It is akin to royalty, in that one of the purposes of the mining lease in India being to give the right to convert the excise duty collected on the manufacturing of motor spirit which is form of a conversion of crude petroleum is in reality a royalty paid on the mineral. It would therefore not be proper to distribute such a revenue on the basis of consumption, particularly when the Province which produces it suffers irreparable loss of her natural capital. The most appropriate use for revenue derived from such a source lies obviously in the compensation for the damage through development of the Province.

For reasons given above, this Government propose the following further amendments in the Draft Constitution :

After clause (2) of article 253 add the following :

Provided that seventy-five per cent. or such higher percentage as may be prescribed of the net proceeds in any financial year of the excise duty on petroleum and kerosene produced in the State of Assam shall not form part of the revenues of the Union but shall be assigned to that State.

For article 254 substitute the following :

Notwithstanding anything in article 253 of this Constitution sixty-two and a half per cent. or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on jute or jute proceeds shall not form part of the revenues of India, but shall be assigned to the States in which jute is grown in proportion to the respective amounts of jute grown therein :

Provided that seventy-five per cent. or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on tea shall not form part of the revenues of India, but shall be assigned to the States in which tea is grown in proportion to the respective amounts of tea grown therein.

Article 266 proposes to impose income-tax, etc., on income derived by supply, transport and other State-owned industries. This is likely to discourage nationalization of industries. Supply Department of the State is for equitable distribution of food, etc., to the people and as such should not be considered as a trading concern.

In view of this, proviso (a) to article 266 should be deleted.

SEVENTH SCHEDULE

LIST I (UNION LIST)

Entry 4

Drafting Committee : That the second part of entry 4 of List I relating

to armed forces in States specified in Part III of the First Schedule be deleted.

Note: The Chairman of the Drafting Committee desired to stress his personal view that the second part of this entry relating to armed forces in States in Part III of the First Schedule should be deleted in order to preclude such States from maintaining any armed forces of their own.

Letter from the Ministry of Defence, October 25, 1948 : The Ministry of Defence have no remarks to offer except that if it is found feasible to amend item 4 of List I of the Seventh Schedule to the Draft Constitution on the lines suggested by the Chairman of the Drafting Committee, precluding any acceding State from maintaining any armed forces of its own, it should be done. As this may not be in accordance with the Instruments of Accession, the matter would obviously require further consideration in the States Ministry.

Entries 5 and 64

The Ministry of Industry and Supply has made the following observations with regard to these entries :

The scope of the powers the Union Government may exercise under item 5 is not clear; would they, for example, extend to every aspect of the industries specified by law, irrespective of whether any of these aspects is covered by the State List? There is also an overlap between items 5 and 64 and it is suggested that the two be amalgamated to read as follows :

The regulation of industries, where such regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest.

The word "necessary" has been included above to bring out the compelling need of the Union control, for example, in the event of war.

For effective implementation by the Union Government of the industrial policy announced by the Government of India on April 6, 1948, and for other reasons, it is necessary to invest the Union Government with certain powers over trade and commerce in respect of, and the production, supply, price and distribution of the goods produced by the industries to be brought under Central regulation and certain other goods such as wholly imported articles or agricultural products. The following additional item is, therefore, suggested :

Regulation of trade and commerce in, and of the production, supply, price and distribution—

(a) of goods which are the products of the industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest,

(b) of any other goods whose regulation similarly is declared by Parliament by law to be necessary or expedient in the public interest.

The foregoing would necessitate suitable amendments in items 32, 33 and 36 of the State List.

Note : Doubts may be entertained as to whether the words "in the public interest" would cover the purposes of defence or the prosecution of war. It would therefore be better to retain the existing entry 5 and to revise entry 64 to remove the overlapping as pointed out by the Ministry of Industry and Supply. The following amendment is accordingly suggested :

For entry 64 in List I of the Seventh Schedule the following entry be substituted :

64. The regulation of industries other than those specified in entry 5 of this List where such regulation under the control of the Union is declared by Parliament by law to be expedient in the public interest.

The inclusion of the additional item suggested by the Ministry of Industry and Supply involves a question of policy. It may, however, be pointed out that under article 226 Parliament will have power to regulate by law trade and commerce in, or the production, supply and distribution of, any goods, whether they are products of industries whose regulation under the control of the Union is declared by Parliament by law to be expedient in the public interest or not, if their regulation becomes necessary or expedient in the national interest. It seems therefore hardly necessary to provide for such regulation by the inclusion of an entry in the Union List as suggested by the Ministry of Industry and Supply.

However, if the proposal to insert this additional item is accepted, the following amendment will be necessary :

After entry 64 in List I of the Seventh Schedule, the following entry be inserted :

64-A. Regulation of trade and commerce in, and the production, supply and distribution of—

(a) goods which are the products of the industries whose regulation under the control of the Union is declared by Parliament by law to be expedient in the public interest ;

(b) any other goods where such regulation under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Price control will be covered by the regulation of production, supply and distribution and it does not seem to be necessary to refer to it specifically.

Entry 7

R. K. Sidhva : That entry 7 of List I of the Seventh Schedule be deleted.

Note : This amendment seeks to omit entry 7 of List I (Union List) of the Seventh Schedule. The subject-matter of this item is under the present Constitution in the Federal Legislative List. It is not clear why this item is sought to be deleted from the Union List. Cantonment areas being military areas the Union should have exclusive legislative power with regard to the administration of such areas. However, the amendment involves a question of policy.

R. K. Sidhva : That for entry 7 of List I of the Seventh Schedule the following be substituted :

Delimitation of the cantonment areas, management of lands within such areas, regulation of house accommodation and relation between landlord and tenants within such areas, local self-government in such areas, and the constitution, finance, functions and powers of local bodies in such areas.

Note : The new item 7 proposed for substitution for the existing item 7 by this amendment is not very different from the existing item. Delimitation of cantonment areas, regulation of house accommodation in such areas, local self-government in such areas and the constitution, finance, functions and powers of local bodies in such areas will be all covered by the existing item 7. The expression "constitution and powers within such areas of cantonment authorities" in the existing item will include "constitution, finance, functions and powers of local bodies in such areas". "Management of lands" and "relation between landlord and tenants within such areas" need hardly be specifically mentioned in this item as the expression "regulation of house accommodation" will cover "relation between landlord and tenant" and also "management of lands". Further, all lands in the cantonment areas are subject to the administration of cantonment authorities, and accordingly "powers of cantonment authorities" will include powers of such authorities in relation to the management of lands. The existing entry thus appears to be quite sufficient and this amendment is hardly necessary.

Entry 9

The Ministry of Works, Mines and Power has suggested that for entry 9 in List I the following entry be substituted :

9. Atomic energy and mineral resources essential to its production ; strategic or key minerals essential for the defence of India.

Note : Atomic energy and all mineral resources essential to its production are already covered by the existing entry 9. If, however, it is intended that exclusive power of legislation should be provided to the Centre in respect of any other mineral necessary for the purpose of defence, then the following entry may be inserted after entry 9 :

9-A. Minerals declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

The expression "strategic or key minerals" suggested by the Ministry of Works, Mines and Power is vague. The new entry proposed which is modelled on entry 5 of List I (Union List) will enable Parliament to declare by law the minerals which are essential for the defence of India or for the prosecution of war.

Entry 22

R. R. Diwakar and S. V. Krishnamoorthy Rao : That for entry 22 in List I the following be substituted :

Piracies and felonies committed on the high seas and in the air and

offences against the law of nations committed on land, high seas and in the air.

or alternatively,

that in entry 22 in List I, after the words "committed on" the word "land" be inserted.

Note: This amendment may be accepted in the following revised form :

For entry 22 of List I of the Seventh Schedule, the following entry be substituted :

22. Piracies and felonies committed on the high seas, and offences against the law of nations committed on land, or the high seas or in the air.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the redraft suggested in the note above.

Entry 26

The Ministry of Industry and Supply has suggested that the phrase "Government of India" should be replaced by the phrase "Union Government". The Ministry has also suggested that this entry should be placed immediately after entry 17 relating to trade and commerce with foreign countries.

Note: The expression "Government of India" has been used throughout the Draft Constitution. It cannot therefore be changed to "Union Government".

We are proposing separately the revision of the order in which different entries have been mentioned in List I (Union List) of the Seventh Schedule.

Entry 31

Amendment proposed by the Ministry of Transport : The wording of entry 31 concerning national highways in List I (Union List) of the Seventh Schedule should be revised so as to read as follows :

31. National highways declared to be such by or under law made by Parliament.

Note: There does not appear to be any objection to this amendment. If this amendment is accepted, then it should be revised as proposed below.

Drafting Committee: That for entry 31 in List I, the following be substituted :

31. Highways declared to be national highways by or under law made by Parliament.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

New entry 40-A

Drafting Committee : That after entry 40 in List I the following new entry be inserted :

40-A. Supervisory control by the Union of educational institutions within the territory of India where such control is declared by Parliament by law to be expedient in the public interest.

Note: See note on amendment proposed by the Drafting Committee regarding new article 266-A.

Entry 41

R. K. Sidhva: That in entry 41 in List I the word "Geological" be deleted and the words "the Geological Surveys" be inserted as a new entry in List III.

Note: This amendment involves a question of policy. If, however, this amendment is accepted, then it should be redrafted as follows:

(1) In entry 41 of List I of the Seventh Schedule the word "Geological" be omitted.

(2) After entry 33 in List III of the Seventh Schedule, the following entry be inserted:

33-A. The Geological Survey of India.

New entry 42-A

R. R. Diwakar and S. V. Krishnamoorthy Rao: That after entry 42 in List I, the following new entry be inserted:

42-A. Ownership of and dominion over lands, minerals and other things of value underlying the ocean sea-ward of the ordinary low water mark on the coast extending three nautical miles.

Note: This amendment is out of place. Presumably, the intention is that the ownership of and dominion over lands, minerals and other things of value underlying the ocean within "territorial waters" shall vest in the Union. The lists, however, relate only to legislative powers and not to ownership of property; and by merely putting a new entry in the Union List we cannot give the Union new rights of property. Accordingly, if it is decided that there should be included in the Constitution a specific provision to the effect that the ownership of and dominion over such lands, minerals and other things of value shall vest in the Union Government and not in any maritime State, then the following amendment would be necessary:

After article 271, the following article be inserted:

271-A. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.

The term "territorial waters" occurs in entry 75 of the Union List and may be used in the new article, because in certain circumstances they may extend beyond the normal limit of three nautical miles.

Once ownership is vested in the Union, legislative power will follow from entry 42 of the Union List and no separate entry for the purpose is necessary.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the new article 271-A as proposed.

Entry 43

Drafting Committee: That for entry 43 in List I the following be substituted.

43. Acquisition or requisitioning of property for the purposes of the Union.

Note : See note on the amendment proposed by the Drafting Committee to entry 35 in List III.

The Ministry of Industry and Supply has suggested that entry 35 in List III (Concurrent List) of the Seventh Schedule should be brought in List I (Union List) of that Schedule and entry 43 in List I of that Schedule should be amended suitably. The Ministry considers that the principles on which compensation shall be assessed, whether the acquisition is for the purposes of the Union or a State, should be uniform throughout the country.

Note : The Special Committee has suggested that entry 35 in List III (Concurrent List) of the Seventh Schedule should be omitted and consequential amendments should be made in entry 43 in List I (Union List) and entry 9 in List II (State List) of that Schedule. The amendment proposed by the Ministry of Industry and Supply thus involves a question of policy.

Entry 47

K. Santhanam : That in entry 47 in List I, for the word "Banking" the words "Scheduled banks and law and regulation of banking" be substituted.

Note : It is not clear why all banks, whether "scheduled" or not, should not be in the Union List.

Entry 49

K. Santhanam : That in entry 49 in List I, for the word "Insurance" the words "Insurance other than State Insurance" be substituted.

Note : This amendment seeks to exclude State Insurance from entry 49 of List I (Union List). Entry 49 of List I (Union List) follows the recommendation of the Union Powers Committee. If this amendment is accepted, then it should be redrafted as follows :

For entry 49 of List I of the Seventh Schedule, the following entry be substituted :

49. Insurance except Insurance undertaken by any State by virtue of any entry in the State List or the Concurrent List.

Entry 50

K. Santhanam : That in entry 50 in List I, after the words "and of corporations" the words "including co-operative societies" be inserted.

Note : This amendment is hardly necessary as "co-operative societies" are not excluded from corporations with objects not confined to one State in entry 50 of List I (Union List).

Entry 56

The Ministry of Industry and Supply considers that the term "for the purposes of the Union" in entry 56 in List I of the Seventh Schedule requires clarification.

Note : Attention is invited in this connection to the amendment proposed by the Drafting Committee below.

Drafting Committee: That for entry 56 in List I the following be substituted :

56. Inquiries, surveys and statistics for the purpose of any of the matters in this List.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

Entry 60

K. Santhanam: That entry 60 in List I be deleted and the same be inserted in List III.

Note: This amendment involves a question of policy. It may, however, be pointed out that an amendment for inclusion in the State List of a new entry "Ancient and Historical Monuments other than those specified in entry 60 of List I" has been suggested separately. (*Vide* new entry 10-A of List II proposed by the Drafting Committee.)

Entry 61

Drafting Committee: That for entry 61 in List I the following be substituted :

61. Establishment of standards of weight and measure ; establishment of standards of quality for agricultural produce.

Note: The Ministry of Agriculture has suggested that entry 61 in the Union List should be amplified so as to read "establishment of standard weights and measures including laying down of quality standards for agricultural produce".

The proposed amendment gives effect to this suggestion.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

K. Santhanam: (i) That entry 61 be deleted from List I and the same be inserted in List III. (ii) That at the end of entry 61 the following be added :
and other standards declared by Parliament by law to be of national importance.

Note: The first of these two amendments which seeks to transfer entry 61 of List I (Union List) to List III (Concurrent List) involves a question of policy. The second amendment is vague, as it is not clear what exactly is intended by "other standards".

Entry 63

The Ministry of Works, Mines and Power has suggested that for entry 63 in List I of the Seventh Schedule the following entry should be substituted:

63. Regulation of oilfields and development of mineral oil resources ; petroleum, and petroleum products, and other liquids and substances declared by Parliament by law to be dangerously inflammable.

The Ministry has given the following reasons in support of this amendment :

Petroleum and petroleum products are of vital importance to the whole country and no individual Province or State can be expected to deal adequately with this subject. According to the draft item 63 as it stands at

present, the Centre will have power to legislate only as regards possession, storage and transport. It is, however, very necessary that petroleum and petroleum products should be entirely within the Union List *for all purposes* including production, distribution, sale, etc., and not merely for possession, storage and transport. Further, though Provinces may be allowed to retain certain powers regarding mines and mineral development in general, it is essential that oilfields and mineral oil development should be made exclusively a Union subject. Item 63 will, therefore, have to be redrafted as proposed.

Note: This amendment involves a question of policy.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided that the words "so far as regards possession, storage and transport" be deleted and that the entry should be amended to read:

63. Petroleum and other liquids and substances declared by Parliament by law to be dangerously inflammable.

Entry 64

K. Santhanam: That in entry 64 in List I for the words "expedient in the public interest" the words "essential in the interests of the Union" be substituted.

Note: The expression "expedient in the public interest" is of wider import than the expression "essential in the interests of the Union". The expression "expedient in the public interest" occurs in entry 34 of the Federal Legislative List in the Government of India Act, 1935. There is no obvious reason why Parliament should have less power under the new Constitution.

Entry 66

K. Santhanam: That in entry 66 in List I, for the words "expedient in the public interest" the words "essential in the interests of the Union" be substituted.

Note: The remarks on the amendment proposed by Santhanam to entry 64 would also apply to this amendment.

The Ministry of Works, Mines and Power has suggested that in entry 66 in List I of the Seventh Schedule, the words "and oilfields" occurring after the words "Regulation of mines" should be omitted.

Note: This amendment is consequential on the amendment suggested by this Ministry with respect to entry 63. If the redraft of entry 63 proposed by the Ministry is accepted, then this amendment will be also necessary.

L. N. Sahu: That for entry 66 of List I of the Seventh Schedule the following be substituted:

66. Power to frame rules regarding terms and conditions for grant of prospecting licences and mining leases, power to modify conditions and terms of existing leases, power to make rules for proper working of mines with due regard to physical safety of workmen employed in mines, their health and welfare, power to establish inspectorate of mines to enforce these rules, power to enforce improved mining methods to ensure

conservation of minerals and mineral products, power to control production, supply and movement of minerals and mineral products.

Note: This amendment involves a question of policy. Under the existing item 66, Parliament may legislate with regard to the regulation of mines and oilfields and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by such legislation to be expedient in the public interest. This, if Parliament so declares, would include all the different matters mentioned in the new item 66 proposed for substitution for the existing item 66 and thus the existing item is comprehensive enough to include all such matters.

Entry 68

K. Santhanam : That for entry 68 in List I, the following be substituted :

All Union elections and elections of Governors ; and Election Commission to superintend, direct and control all such elections.

Note: The reference to Union elections in this amendment is vague. Presumably, elections to Parliament and of the President and Vice-President which are already covered by the existing entry 68 of List I (Union List) are meant. This amendment, however, seeks to include elections of Governors in that entry. The Special Committee has recommended that the Governors should be appointed by the President, instead of being elected, and if this recommendation is accepted, then the inclusion of elections of Governors in this entry would not be necessary. However, even if the Governors are elected, elections of Governors cannot be included in this entry in view of the provisions of article 140 (2) of the Draft which provides that the Legislature of a State could by law regulate any matter relating to the election of a Governor. It may be pointed out that no amendment has been proposed by Santhanam in article 140(2).

Entry 70

K. Santhanam : That in entry 70 in List I, for the words "committees of" the words "committees or commissions appointed by" be substituted.

Note: This amendment may be accepted in the following revised form :

In entry 70 of the Union List, after the words "committees of Parliament" the words "or commissions appointed by Parliament" be added.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

New entry 73-A

R. R. Diwakar and S. V. Krishnamoorthy Rao : That after entry 73 in List I the following new entry be inserted :

73-A. Trusts, monopolies and combines.

Note: This amendment seeks to insert a new entry "73-A. Trusts, monopolies and combines" after item 73 in List I of the Seventh Schedule. "Trusts and trustees" have been placed in List III (Concurrent List) of the Seventh Schedule as entry 9 of that List. Whether the proposed item should be included in the Union List or in the Concurrent List or in the State List is

a matter involving questions of policy. Trusts, monopolies and combines are relatable to a certain extent to the entry "Trade and commerce within the State" mentioned in item 32 of the State List. Now, if trusts, monopolies and combines be placed in the Union List, then the Government of any State will not have any power to control them in regulating trade and commerce within the State. It would, therefore, be advisable to place this new entry in the Concurrent List instead of in the Union List, so that both the Union Government and the Government of the State will have power to control the operations of combines and monopolies. If, therefore, it is decided to place this item in the Concurrent List, then the following amendment would be necessary :

After entry 28 of List III of the Seventh Schedule, the following new entry be inserted :

28-A. Monopolies and combines.

The entry "Trusts" being already in item 9 of List III (Concurrent List) in a different sense, it is not desirable to use the word "trusts" in the new entry 28-A proposed for insertion in that List.

Entry 74

N. V. Gadgil : That for entry 74 of List I of the Seventh Schedule the following be substituted :

74. Multi-purpose river valley development, including flood control, irrigation, navigation and hydro-electric power.

or, alternatively,

That in entry 74 of List I of the Seventh Schedule for the word "waterways" the words "river valleys" be substituted.

Note : The Drafting Committee recommended that the following words be added to item 74 in List I :

and for other purposes, where such development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

It is not clear if the expression "river valleys" would include all kinds of inter-State waterways. If it is so, then there is hardly any objection to the substitution of the expression "river valleys" for the expression "waterways" as suggested in the alternative amendment. The first amendment which restricts this item to "multi-purpose river valley development" would however be open to objection as it would not cover a single purpose development of inter-State waterways and can therefore be hardly accepted.

The Ministry of Industry and Supply has suggested that the words "The development of" should be omitted from entry 74 of List I to give more comprehensive scope to the entry.

Note : The words "The development of" are necessary in view of the words "for purposes of flood control, irrigation, navigation and hydro-electric power" which follow the words "inter-State waterways".

The Ministry of Works, Mines and Power has suggested that in entry 74 in List I of the Seventh Schedule, for the words "The development of inter-State waterways" the words "Development of inter-State rivers and river valleys" should be substituted. The Ministry has pointed out that the word "waterways" emphasizes the navigational aspect and might restrict the scope of Central control only to waterways without giving to the Centre any control on the river valleys as a whole. The Ministry therefore considers that the amendment suggested above is very essential for multi-purpose river valley development.

Note: There is hardly any objection to the acceptance of this amendment. Attention is also invited in this connection to the amendment proposed by the Drafting Committee and note thereon.

Drafting Committee: That the following words be added to entry 74 in List I:

and for other purposes, where such development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Note: The Drafting Committee recommended the addition of these words to entry 74 of List I following the wording of entry 64 in that List.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the above amendment and to revise the entry as follows:

74. Development of inter-State rivers and inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Entry 76

The Ministry of Industry and Supply has suggested that in entry 76 in List I of the Seventh Schedule, for the words "Manufacture and distribution" in the two places where they occur, the words "Production, supply, price and distribution" should be substituted.

Note: The reference to price control is hardly necessary as the control of supply and distribution will include price control. The word "production" would hardly be appropriate as salt is manufactured by adoption of certain processes. This amendment may be accepted in the following revised form:

For entry 76 in List I of the Seventh Schedule the following entry be substituted:

76. Manufacture, supply and distribution of salt by the Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the above redraft.

Entry 77

K. Santhanam: That entry 77 in List I be deleted.

Note: This amendment may be accepted. A similar amendment has already been suggested by the Drafting Committee. (See Drafting Committee's amendment below.)

Drafting Committee: That entry 77 in List I be omitted.

Note: The Drafting Committee recommended that entry 77 be omitted from List I, because, as pointed out by Alladi Krishnaswami Ayyar*, its retention might be open to the construction that there was an omnibus power given to Parliament to deal with emergencies apart from the provisions contained in Part XI of the Draft.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

Entry 78

L. N. Sahu: That in entry 78 in List I, for the words "Lotteries organized" the words "No lotteries shall be organized" be substituted.

Note: This amendment is misconceived. List I of the Seventh Schedule contains the subjects with respect to which Parliament has exclusive power to legislate, and entry 78 of that List relates to the subject of lotteries organized by the Government of India or the Government of any State. It cannot therefore be stated in that entry that no lotteries shall be organized by the Government of India or the Government of any State.

Entries 81, 82 and 83

K. Santhanam: (i) That at the beginning of entry 81 in List I, the words "Levy, collection and distribution to units of" be inserted. (ii) That at the end of entry 82 in List I, the words "Levy, collection and distribution to units of" be inserted. (iii) That at the beginning of entry 83 in List I, the words "Levy, collection and distribution to units of" be inserted.

Note: These amendments are hardly necessary, as the levy and collection of a duty or tax will be covered by the mention of the duty or tax. As regards distribution to the units, the provisions laid down in the Constitution will apply and if there is no provision, appropriate grants to the units will have to be made under article 262.

R. K. Sidhva: That in entry 83 in List I, the following words be deleted :
Terminal taxes on goods or passengers, carried by rail or air.

Note: This amendment seeks to omit "Terminal taxes on goods or passengers, carried by railway or air" from entry 83 of List I (Union List) of the Seventh Schedule. It has been proposed to place this entry in the State List. As railways and airways extend over several States, it would be more convenient to vest the power of legislation with respect to the levy of such taxes on goods or passengers carried by railway or air in the Union Parliament than in the Legislature of a State. It has, however, been provided in article 250 following the existing practice that although the said

*See Minutes of the Drafting Committee, March 27, 1948, Vol. IV, Doc. No. 1(ii), p. 406.

taxes shall be levied and collected by the Union, the net proceeds thereof shall be given away wholly to the State within which the tax is leviable. The Expert Committee on the Financial Provisions of the Constitution has not recommended any change either in entry 83 of the Union List or in the provisions relating to the levy, collection and distribution of such taxes referred to above (*vide* paragraph 44 of its Report).

Entry 84

K. Santhanam : That the following proviso be added to entry 84 in List I :

Provided that not less than half the proceeds shall be annually distributed to the units acceding to this item according to the provisions of the Constitution.

Note : This amendment is out of place. The provisions relating to distribution of taxes on income other than agricultural income are laid down in article 251 and the amendment proposed in entry 84 should be made in that article.

Entries 86 and 88

B. Gopala Reddi : That entry 86 in List I be deleted.

Note : This amendment seeks to omit entry 86 from List I (Union List) of the Seventh Schedule and it has been proposed to place this entry in the State List. This is a matter which involves questions of policy. The general principle is that where the goods subjected to excise are of all-India consumption (though they may be produced in a particular State), the excise should be Central ; otherwise one State would get power to tax consumers all over India. It must be remembered that though Central excises are to be levied and collected by the Centre, their net proceeds may be distributed among the units under article 253.

K. Santhanam : (i) That at the beginning of entry 86 in List I, the words "Levy, collection and distribution to units of" be inserted. (ii) That at the beginning of entry 88 in List I, the words "Levy, collection and distribution to units of" be inserted.

Note : The remarks on the amendments proposed by Santhanam to entries 81 to 83 above would also apply to these amendments.

Entry 91

K. Santhanam : That entry 91 in List I be transferred to List III.

Note : This amendment involves a question of policy. The Union Powers Committee recommended that residuary powers should remain with the Centre. There are advantages in putting them into the Concurrent List.

LIST II (STATE LIST)

New entry 5-A

K. Santhanam : That after entry 5 in List II the following new entry be inserted :

5-A. Provincial militia.

Note: The expression "Provincial militia" is inappropriate since the Constitution does not use the old term "Province". Apart from the wording, the amendment involves a question of policy.

Entry 7

Drafting Committee: That in entry 7 in List II, the words "and State Public Service Commissions" be omitted.

Note: The Special Committee was of the view that the entry "State Public Service Commissions" should be transferred from List II (State List) of the Seventh Schedule to List III (Concurrent List) of the Schedule. Hence the proposed amendment.

(See also the amendment proposed by the Drafting Committee on new entry 25-A in List III.)

Entry 9

K. Santhanam: That in entry 9 in List II, for the words "subject to the provisions of List III with respect to regulation of" the words "and the determination of" be substituted.

Note: The Special Committee has recommended that entry 35 of List III (Concurrent List) should be omitted and consequential change should be made in entry 9 of List II (State List). It has accordingly been proposed separately to replace entry 9 by the following entry :

9. Acquisition or requisitioning of property except for the purposes of the Union.

The reference to the determination of the principles on which compensation is to be awarded need not be specifically stated in the item. The amendment proposed in item 9 by Santhanam would not, therefore, be necessary.

Letter from the Ministry of Law No. F. 18/48/R, June 25, 1948: With reference to your letter No. CA/21/Cons/48-III, dated the 14th June, 1948, on the above subject, I am directed to forward for the consideration of the Constituent Assembly the following suggestions for amendment to the Draft Constitution of India :

(1) Entry 9 in the State List in the Draft Constitution may be amended to include "requisitioning of land". In the absence of a legislative entry covering this subject in the present Constitution, it recently became necessary for the Governor-General to issue a notification under section 104 of the Government of India Act, 1935, empowering the Provincial Legislatures to make laws on the subject. A copy of the notification is enclosed. A reference is also invited to entry 43 of the Union List in the Draft Constitution which covers the requisitioning as well as the acquisition of property for the purposes of the Union.

Enclosure

Government of India, Ministry of Law, Notification No. F. 311/47-C and G, dated October 21, 1947 : In exercise of the powers conferred by section 104 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, the Governor-General hereby empowers all Provincial Legislatures to enact laws with respect to the requisitioning of land, being a matter not enumerated in any of the Lists in the Seventh Schedule to the said Act.

The Ministry of Industry and Supply has suggested that necessary amendment should be made in entry 9 in List II of the Seventh Schedule to give effect to the Ministry's suggestion to transfer entry 35 of List III (Concurrent List) to List I (Union List) of that Schedule.

Note : Consequential amendment in entry 9 in List II of the Seventh Schedule will be only necessary if the suggestion of the Ministry to transfer entry 35 of List III to List I of the Seventh Schedule is accepted.

The Drafting Committee : That for entry 9 in List II, the following be substituted :

9. Acquisition or requisitioning of property except for the purposes of the Union.

Note : Please see note on amendment proposed by the Drafting Committee to entry 35 in List III.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to retain entry 35 of List III and accordingly proposed an amendment of entry 9 of List II which substituted the words "Acquisition or requisitioning of property" for the words "compulsory acquisition of land".

Entry 10

K. Santhanam : That at the end of entry 10 in List II the words "and situated in the State, other than those included in entry 39 of List I" be inserted.

Note : This amendment is not necessary as the institutions mentioned in entry 39 of List I would be excluded from entry 10 of List II (State List) by virtue of the provisions contained in clause (3) of article 217 which starts with the words "Subject to the two preceding clauses".

New entry 10-A

Drafting Committee : That after entry 10 in List II, the following new entry be inserted :

10-A. Ancient and Historical Monuments other than those specified in entry 60 of List I.

Note : It has been pointed out by Sampurnanand, Minister for Education and Labour, United Provinces, that "Ancient and Historical Monuments declared by Parliament by law to be of national importance; archaeological sites and remains" are entered as item 60 in List I (Union List) of the Seventh Schedule, but the Schedule is silent about monuments not declared by Parliament to be of national importance; that the fact that the subject

finds no mention either in List II or List III would lend support to the view that the monuments not so declared are included in the general term "archaeological sites and remains" and even though not separately mentioned, form part of the exclusive responsibility of the Centre ; and that this is not a proper arrangement.

This amendment has therefore been suggested to meet this criticism.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

Entry 12

L. N. Sahu : That the words "and Deputy Speaker" be deleted in entry 12 in List II.

Note : This amendment seeks to omit the words "and Deputy Speaker" from entry 12 of List II (State List) of the Seventh Schedule. It is not clear why it is sought to omit the reference to the Deputy Speaker of the Legislative Assembly from that paragraph although the reference to the Deputy Chairman of the Legislative Council therein has been left unaltered. It may further be pointed out that provision has been made in article 163 for the fixation of the salary of the Deputy Speaker of the Legislative Assembly by the Legislature of the State by law. It is therefore necessary that the reference to the Deputy Speaker should be retained in paragraph 12 of List II. This amendment cannot therefore be accepted.

Entry 14

K. Santhanam : That in entry 14 in List II, after the words "powers of" the words "village panchayats" be inserted; and the words "or village administration" be deleted.

Note : This amendment is hardly necessary as village panchayats would be covered by "local authorities for the purpose of local self-government or village administration".

R. K. Sidhva : That the following be added to entry 14 in List II :

Local self-government in cantonment areas, the regulation of house accommodation in such areas and the delimitation of such areas.

Note : The remarks on the amendment proposed by Sidhva to entry 7 under List I of the Seventh Schedule would also apply to this amendment.

Entry 15

K. Santhanam : That in entry 15 in List II, the words "and marriages" be inserted at the end.

Note : Registration of marriages is now covered by entry 6 of List III (Concurrent List). There is no reason why the Centre should be debarred from legislating even for optional registration of marriages, which would be the effect of this amendment.

Entry 16

K. Santhanam : That in entry 16 in List II, for the words "other than pilgrimages to places beyond India" the words "to places within the Province" be substituted.

Note : If this amendment is accepted, then pilgrimages to places in another State cannot be regulated by law made by a State. Supposing there is an outbreak of plague in a place of pilgrimage in State A, State B would be unable to prevent its residents from going to that place, and any legislation for the purpose would have to be undertaken by the Centre if the "residuary powers" remain with the Centre.

Entry 18

Drafting Committee : That the following be added to entry 18 in List II :

Subject to the provision of entry 40-A of List I.

Note : See note on the amendment proposed by the Drafting Committee for the insertion of new article 266-A.

Entry 24

K. Santhanam : That in entry 24 in List II of the Seventh Schedule, after the words "agricultural loans", the words "consolidation of agricultural holdings; State and co-operative agricultural farms; acquisition by State of agricultural land and compensation to be paid therefor" be inserted.

Note : "Consolidation of agricultural holdings" will be covered by item 24 of List II (State List) and "acquisition by State of agricultural land and compensation to be paid therefor" will be covered by item 9 of that list and it is not necessary to mention them specifically in item 24. "Co-operative agricultural farms" will be covered by item 21 of List II and it is not also necessary specifically to mention them in item 24. This amendment is therefore hardly necessary.

*Entries 27 and 29**

Letter from the Ministry of Agriculture, No. 25-1/48-Policy, 5th/8th July, 1948 : I am directed to invite a reference to your letter No. CA/21/Cons/48-III, dated the 14th June, 1948, on the subject mentioned above and to enclose a copy of a letter from the Hon'ble Minister for Agriculture to the Hon'ble Minister for Law and a note submitted to the committee appointed for considering the Draft Constitution. As will be clear from these two documents, the Ministry of Agriculture are of the view that if the national interest is to be properly furthered then the following amendments to the Draft Constitution are necessary. In the Union List, the following item should be included, namely :

co-ordination of the development of agriculture including animal husbandry, forestry and fisheries.

For the reasons given in the note mentioned above the Ministry of Agriculture would strongly urge that action may also be taken as suggested in the last para of the note to enable the Centre to discharge effectively the responsibility for the development of agriculture and the supply and distribution of food and to co-ordinate an all-India policy on agricultural

*See also new entries 34-A to 34-C of List III.

development. The additional powers asked for relate to the inclusion in the Concurrent List of :

- (1) Reclamation of waste lands on a large scale requiring the use of plant and machinery ;
- (2) Forest laws and working plans ; and
- (3) Inland fisheries and fishery laws.

In addition, it has also been suggested that item 61 in the Union List should be amplified to read "Establishment of standard weights and measures including laying down of good quality standards for agricultural products".

The Ministry of Agriculture would be grateful to know in due course the action taken on the suggestions contained in the letter and the note sent herewith.

Enclosure 1

Letter from Jairamdas Daulatram to B. R. Ambedkar, January 16, 1948 :

As you know, under the Government of India Act, 1935, Agriculture is a purely provincial subject, *vide* item No. 20, Provincial Legislative List, Seventh Schedule of the Government of India Act, 1935. The only item in the Federal Legislative List which could be invoked by the Centre for doing something in the sphere of agriculture is item 12 which runs as follows :

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

In fact there was no Ministry of Agriculture until late in 1945 and how it came into existence is given in paragraphs 6, 7 and 8 of the Report of the Reorganization Committee for the Departments of Agriculture and Food which is reproduced below for easy reference :

6. There was no separate Department of Agriculture at the Centre until late in 1945. The primary responsibility for agriculture and animal husbandry development including fisheries, forestry, co-operation and other allied subjects rested with the Provincial and State Administrations and the functions of the Centre related to (a) control and management of the Central Research Institutes such as Indian Agricultural Research Institute, Indian Veterinary Research Institute, Indian Dairy Research Institute, Forest Research Institute, (b) the co-ordination of agricultural research on an all-India basis through the Imperial Council of Agricultural Research and the Commodity Committees, and (c) the running of training institutions for imparting higher education in agriculture, animal husbandry and forestry. In addition, the Central Government has been responsible for handling questions relating to agriculture and allied subjects in respect of the Centrally administered areas of Delhi, Ajmer-Merwara, Coorg, Baluchistan and Panth Piploda. These functions were grouped together under the name 'Lands' which was an integral part of a single department of Education, Health and

Lands under one Secretary and one Member. All this work was, in fact, handled by one Deputy Secretary and one Under Secretary of the Education, Health and Lands Department, and in close collaboration with the Vice-Chairman, Indian Council of Agricultural Research, and the heads of the Central Research and Training Institutes.

7. The worsening of the food supply position in India particularly after the entry of Japan into the war and the consequent loss of Burma rice imports focussed public attention on the importance of increasing the production of food within the country to the maximum extent possible. It was realized that while the primary responsibility for framing and executing policies and programmes must rest with the Provinces and States, the Centre alone could assess the food requirements of the country as a whole and co-ordinate the individual plans of the Provinces into a common all-India plan.

8. The first Food Production Conference was held early in April, 1942 under the Chairmanship of the then Member for Education, Health and Lands which chalked out the lines of a grow more food campaign for implementation by the Provinces and States. For about a year thereafter, the work relating to the grow more food campaign was handled by the Deputy Secretary and the Under Secretary above mentioned in consultation with the then Vice-Chairman, Indian Council of Agricultural Research, and with the assistance of a newly appointed officer designated as Agricultural Production Adviser. This was the beginning of the further expansion of the Agriculture Department which has gradually led to its present organization. In 1944, the agricultural work was made the separate charge of an Additional Secretary together with a Deputy Secretary and an Under Secretary assisted by the Agricultural Production Adviser and his staff. It was not until September, 1945, however, that a separate department of Agriculture under a Secretary to Government was brought into existence.

The difficulties of feeding the ever-increasing population of India and the experience of the last war have made it abundantly clear that the national interest demands that the Centre should play a more active role in the sphere of agricultural development and in January 1946 a statement of agriculture and food policy in India was issued by Government from which it will be seen that the Centre assumed to itself specific responsibilities for the development of agriculture and the supply and distribution of food and to co-ordinate an all-India policy of agricultural development, food production and distribution.

The position is satisfactory so far as it goes but in our opinion it does not go far enough. In fact, the Ministry of Finance have been challenging the Ministry of Agriculture even when they restrict their schemes to the sphere defined in the statement of policy referred to above.

We have given the matter very careful consideration and we think that there will be no adequate answer to the challenge of the Ministry of Finance

that agricultural development is a provincial responsibility, until there is some specific suitable provision in the Constitution Act itself. I am inclined to think that the time has come when the Centre ought to take up the entire responsibility in regard to food. But the minimum that is essential in national interest is that Centre must have an active hand in co-ordinating and guiding agricultural development all over the country. I would, therefore, suggest for your consideration that, besides the existing item No. 12 in the Federal Legislative List, the following item should also be included in that List, namely, 'Co-ordination of the development of agriculture including animal husbandry, forestry and fisheries and the supply and distribution of food'.

I shall be grateful if you will kindly take action in the matter urgently, as I understand that the Drafting Committee will shortly take up the question of the distribution of powers between the Centre and the units.

Enclosure 2

Note from the Ministry of Agriculture

SUBJECT : *Additional powers to be provided for the Centre in the new Constitution of India with regard to the development of agriculture.*

Under the Government of India Act, 1935 agriculture is purely a provincial subject, *vide* item 20, Provincial Legislative List, Seventh Schedule of the Government of India Act, 1935. The only item in the Federal Legislative List which could be invoked by the Centre for doing something in the sphere of agriculture is item 12 which runs as follows :

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

2. In fact there was no separate Ministry of Agriculture until late in 1945. The primary responsibility for agriculture and animal husbandry development including fisheries, forestry, co-operation and other allied subjects rested with the Provincial and State Administrations and the functions of the Centre related to: (a) control and management of the Central Research Institutes such as the Indian Agricultural Research Institute, Indian Veterinary Research Institute, Indian Dairy Research Institute, and Forest Research Institute, (b) the co-ordination of agricultural research on an all-India basis through the Indian Council of Agricultural Research and the Commodity Committee, and (c) the running of training institutions for imparting higher education in agriculture, animal husbandry and forestry. In addition, the Central Government has been responsible for handling questions relating to agriculture, and allied subjects in respect of the Centrally administered areas of Delhi, Ajmer-Merwara, Coorg, and Panth Piploda. These functions were grouped together under the name 'Lands' which was an integral part of a single department of Education, Health and Lands under one Secretary and one Minister.

3. The worsening of the food supply position in India particularly after the entry of Japan into the war and the consequent loss of Burma rice imports focussed public attention on the importance of increasing the production of food within the country to the maximum extent possible. It was realized that while the primary responsibility for framing and executing policies and programmes must rest with the Provinces and States, the Centre alone could assess the food requirements of the country as a whole and co-ordinate the individual plans of the Provinces into a common all-India plan.

4. The first Food Production Conference held early in April, 1942, chalked out the lines of a grow more food campaign which is still being pursued by the Central Government. The campaign is largely based on financial assistance from the Centre to the Provinces and to that extent only limited objects could be achieved.

5. The difficulties of feeding the ever-increasing population of India and the experiences of the last war have made it abundantly clear that the national interest demands that the Centre should play an active role in the sphere of agricultural development and in January, 1946 a statement of agriculture and food policy in India was issued by Government according to which the Central Government assumed to itself in practice specific responsibilities for the development of agriculture and the supply and distribution of food and to co-ordinate an all-India policy of agricultural development, food production and distribution.

6. The partition of India has resulted in large surplus areas going over to the Government of Pakistan leaving the Dominion of India in a more precarious position in food supply than even before the partition. Considerable sums spent in the annual import of food-grains to stave off starvation and famine have already hampered the import of heavy machinery required for the industrial development of the country. It is clear, therefore, that unless India becomes self-sufficient in the matter of food supply which could be done only if agriculture is developed according to an all-India plan directed from the Centre, the development of India as a whole would be hampered. The time has come when the Centre ought to undertake greater responsibility in regard to food, but the minimum that is essential in national interest is that the Centre must have an active hand in co-ordinating and guiding agricultural development all over the country.

7. The Draft Constitution of India has now become available, and an examination of it shows that the position of agriculture in the new Draft Constitution is in no way better than in the Government of India Act, 1935. After a very careful assessment of the pros and cons it is considered that while the Centre should not unduly encroach on the legitimate functions of the Provinces and States in the field of agriculture and should achieve an all-India agricultural development with the willing co-operation of the participating units, there are certain aspects which could be effected only if the Centre had the necessary legislative powers. These functions are detailed

below :

Reclamation of waste lands on a large scale requiring the use of plant and machinery : One of the important items of the grow more food campaign is the large-scale reclamation of waste lands by the use of tractors and other heavy implements. This is an item where all participating units may not have the necessary finances for importing machinery and technicians to undertake individually large-scale reclamation. While some Provinces like U.P. have made some headway in the direction of large-scale reclamation other Provinces have made no progress. A scheme is under preparation in the Ministry of Agriculture for the large-scale reclamation of waste lands all over India as a measure of increasing food production and this could be achieved only if the Central Government takes to itself the necessary legislative powers in the matter. This is particularly necessary where a single Province may hamper progress by declining for various reasons to reclaim large tracts of land. The volume of public opinion is now considerably in favour of the Centre taking the initiative in this matter. In practice, however, land reclamation would be done as far as possible with the willing co-operation of the Provinces and States and legal provisions will be invoked only if a particular Province or State declines responsibility to reclaim large tracts for any reason.

Forestry : While there would be no two opinions that the Provincial Governments and States should have considerable freedom in the management of their own forests, it will be generally admitted that in the matter of forest exploitation and development no Province or State can follow a policy entirely independent of its neighbouring units. Forests have a great bearing on the general agricultural development and prosperity of the country as a whole, and it is essential to ensure that no Province or State follows, even inadvertently, a policy which will be detrimental to the rest of the country. This is particularly so as the acts of a particular Province will affect another Province which had nothing to do with the forest policy pursued by the former Province. For instance, floods which do considerable havoc in the plains may be the result of indiscriminate fellings in catchment areas under the control and jurisdiction of an entirely different Province. What we really want therefore is legal power to ensure that in their working plans the Provincial or State Governments do not allow exploitation of their own forests in a way which will be detrimental to the interests of other areas. In other words, we must have a uniformity in respect of forest laws and their enforcement and an over-all co-ordination of working plans, as was the case when "Forests" was a reserved subject. For these reasons it is suggested that certain aspects of forestry, viz., 'Forest laws and working plans' may be included in the Concurrent List.

Fisheries : It is considered that certain aspects of fisheries, viz., 'Inland Fisheries and fishery laws' should also for more or less the same reasons as stated in the previous paragraph be included in the Concurrent List. In

the case of bigger rivers flowing through more than one Province or State, any action, legislative or executive, taken by one unit will have repercussions on the fisheries in the other units. The question of fishery rights have in many other countries led to as bitter controversies and disputes as in the case of navigation and irrigation and the development of fisheries with necessary powers at the Centre on all-India basis at least to the extent indicated would be necessary.

Agricultural Marketing: Under the Agricultural Produce (Grading and Marking) Act, 1937, the Centre is competent to lay down grade standards for agricultural produce but it has no power to enforce them. Neither in the Union List nor in the Concurrent List has any provision been made for the Centre to retain this power of laying down quality standards. Laying down standards of quality cannot be done in isolation by a particular Province or State and should continue to be dealt with by the Centre as quality standards all over India should be on a uniform basis. At the same time the Central Government cannot aspire to set up a machinery to enforce such quality standards which should be set down exclusively by the Provincial and State Governments. The object could be achieved by amplifying item 61 in the Union List, namely, 'establishment of standard weights and measures' to read 'establishment of standard weights and measures, including laying down of quality standards for agricultural produce'.

As regards 'Regulation of agricultural produce exchanges and adoption of standard contract terms', it could be dealt with suitably under the provision already existing in item 10 of the Concurrent List in the Draft Constitution, namely, 'Contracts including partnership, agency, contracts of carriage and other special forms of contracts but not including contracts relating to agricultural land'. As regards many other agricultural items it is felt that while it would be desirable for the Centre to take an active part particularly in the co-ordination of the development of agriculture, the necessary work should be done with the willing co-operation of all Provinces and States and by establishing inter-State councils where necessary, under section 246 of the new Constitution rather than undertaking legislative powers to enforce the Central Government action on unwilling units.

To sum up, it is suggested that to enable the Centre to discharge effectively the responsibility for the development of agriculture and the supply and distribution of food and to co-ordinate an all-India policy on agricultural development, the following items should be included in the Concurrent List :

- (1) Reclamation of waste lands on a large scale requiring the use of plant and machinery ;
- (2) Forest laws and working plans ; and
- (3) Inland fisheries and fishery laws.

In addition item 61 in the Union List should be amplified to read 'Establishment of standard weights and measures including laying down of quality standards for agricultural produce.'

Note : The Ministry of Agriculture has suggested that to enable the Centre to discharge effectively the responsibility for the development of agriculture and the supply and distribution of food and to co-ordinate an all-India policy on agricultural development, the following items should be included in the Concurrent List :

- (1) Reclamation of waste lands on a large scale requiring the use of plant and machinery ;
- (2) Forest laws and working plans ; and
- (3) Inland fisheries and fishery laws.

If the amendments proposed are accepted, then entry "27. Forest" and entry "29. Fisheries" in the State List will have to be transferred to the Concurrent List and a new entry "Reclamation of waste lands" will have to be included in the Concurrent List. If "Forests" and "Fisheries" are included in the Concurrent List, then the Centre will have power to legislate with respect to such of the matters relating to forests and fisheries as are considered necessary for all-India purposes, *e.g.*, the prescribing of forest laws and working plans for forests, and the prescribing of fishery laws. If "Reclamation of waste lands" is placed in the Concurrent List, then both the Centre and the States will have power to legislate with respect to that matter, the Centre having over-riding powers. It would, therefore, be competent for the Centre to legislate with regard to large-scale reclamation of waste lands requiring the use of plant and machinery. An entry in the form "Reclamation of waste lands on a large scale requiring the use of plant and machinery" would be vague and accordingly the entry "Reclamation of waste lands" without any qualifying words has been suggested. To give effect to the suggestions of the Ministry the Drafting Committee proposed the amendment below.

Drafting Committee : That entries 27 and 29 be omitted from List II.

Entry 28

L. N. Sahu : That for entry 28 of List II of the Seventh Schedule the following be substituted :

28. Grant of prospecting licences and mining leases in accordance with the rules framed by the Union Government as provided in entry 66 of List I and collection and appropriation of all revenue therefrom.

Note : This amendment is consequential on Sahu's amendment proposed to entry 66 of List I of the Seventh Schedule and will not be necessary if that amendment is not accepted. The remarks on the said amendment may be seen in this connection.

The Ministry of Works, Mines and Power suggested that in entry 28 in List II of the Seventh Schedule, the words "and oilfields" should be omitted.

Note : This amendment is consequential on the amendment proposed by the Ministry in entry 63 of List I of the Seventh Schedule. If the new entry proposed by the Ministry for substitution for the existing entry 63 in List I is adopted, then this amendment will also be necessary.

Entries 32, 33, 36 and 37

The Ministry of Industry and Supply has suggested that consequential amendments will be necessary if the amendments proposed by the Ministry in article 244(b) and entry 64 in List I of the Seventh Schedule are accepted, and the new entry 64-A proposed by the Ministry for insertion in List I is also accepted.

Note : If the suggestions of the Ministry of Industry and Supply are accepted, then the following amendments will be necessary :

- (1) In entry 32 of List II of the Seventh Schedule, after the words "within the State" the words "subject to the provisions of entry 64-A of List I" be inserted.
- (2) Entry 33 of List II of the Seventh Schedule be deleted.
- (3) In entry 36 of List II of the Seventh Schedule, after the words "distribution of goods" the words "subject to the provisions of entries 64-A and 76 of List I" be inserted.
- (4) For entry 37 of List II of the Seventh Schedule, the following entry be substituted :

37. Regulation of industries, subject to the provisions in List I with respect to the regulations of certain industries under the control of the Union.

Entry 34

K. Santhanam : That at the end of entry 34 in List II, the words "regulation of rate of interest on all loans including promissory notes" be inserted.

Note : Regulation of rates of interest on all loans will be covered by the entry "Money lending and money lenders" in item 34 and it has been held by the Privy Council that regulation of rates of interest on promissory notes will also be covered by this entry. The amendment is therefore unnecessary.

*Entry 41**

Letter from the Ministry of Labour No. G-7, May 20, 1948 : I am directed to invite attention to the following items in the Seventh Schedule to the Draft Constitution of India which relate specifically to Labour :

List I (Union List)

57. Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

59. Industrial disputes concerning Union employees.

65. Regulation of labour and safety in mines and oilfields.

List II (State List)

41. Relief of the poor; unemployment.

List III (Concurrent List)

25. Factories.

26. Welfare of labour; conditions of labour; provident funds; employers'

*See also entries 26 and 27 of List III.

liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

27. Unemployment and social insurance.

28. Trade Unions; industrial and labour disputes.

There are, of course, other items, *e.g.*, item 13 of the Union List, with which the Ministry of Labour are also concerned, but the items listed above indicate how responsibility in labour matters is shared between the Centre and the Provinces.

The position in regard to employment does not appear to be clear. Item 41 of the State List refers to "unemployment", while item 27 of the Concurrent List refers to unemployment insurance and item 26 to "welfare of labour and conditions of labour". "Employment" comes within the scope of "conditions of labour" and "unemployment insurance" also presupposes some control over employment. The point at issue is whether the Centre would be in a position to regulate employment and whether it would have the power to co-ordinate policy in regard to the functioning of employment exchanges in the country. It seems that in view of the entry in item 41 of the State List, employment policy including employment exchanges would fall within the State List and not the Concurrent List. This would not be satisfactory. In accordance with the Industry and Supply Ministry Resolution of the 6th April 1948, dealing with industrial policy, which has been accepted by the Legislature, the Centre will assume control over practically all the major industries of the country by a declaration of Parliament as envisaged in item 64 of the Union List. In the circumstances, it seems rather illogical to leave the Provinces in full control of employment. At a recent conference of Labour Ministers held in New Delhi, it was agreed that "employment" should be included in the Concurrent List.

I am also to point out that there appears to be some overlapping between item 26 and item 27 of the Concurrent List. Item 27 relates to "Unemployment and social insurance", whereas item 26 includes "provident funds; employers' liability and workmen's compensation; health insurance including invalidity pensions; and old age pensions". Health insurance is a form of social insurance (item 26). Apart from this overlapping, the arrangement of subjects in items 26 and 27 of the Concurrent List does not appear to be satisfactory. The modern tendency is to use the comprehensive term "social security" to cover unemployment insurance, social insurance, provident fund, invalidity pensions, old age pensions, employers' liability and workmen's compensation. To split up these subjects into different items in the Concurrent List would not be desirable.

In the light of what has been stated above, it is suggested that :

(1) in item 41 of the State List (List II) "unemployment" may be deleted. The item will then read : "41. Relief of the poor".

(2) in place of items 26 and 27 in the Concurrent List, the following may be substituted : "Welfare of labour including provident funds; pensions and

all forms of social insurance; conditions of labour; employment and unemployment.

I am to request that the above proposals which have the approval of the Hon'ble Minister for Labour may be placed before the Drafting Committee for early consideration.

Note: These amendments proposed by the Ministry of Labour may be accepted. But employment and unemployment should be included in a separate entry, rather than in entry 26, for "unemployment" refers not only to industrial unemployment, but to all kinds of unemployment. Further the references to "employers' liability" and "workmen's compensation" should be specifically mentioned in entry 26 like "provident funds" and "pensions" to avoid any doubt as to whether "social insurance" to be specified in this entry would include "employers' liability" and "workmen's compensation" which are specifically mentioned in entry 27 of the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935.

Accordingly, to give effect to the above suggestions, amendments have been proposed in entry 41 of List II below and entries 26 and 27 of List III.

Drafting Committee: That for entry 41 in List II, the following be substituted :

41. Relief of the poor.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

K. Santhanam: That in entry 41 in List II, the words "subject to item 27 in List III" be inserted at the end.

Note: This amendment is hardly necessary in view of the opening words "Subject to the two preceding clauses" of clause (3) of article 217.

Entry 42

K. Santhanam: That at the end of entry 42 in List II of the Seventh Schedule the words "with objects confined to the State" be inserted.

Note: This amendment is not necessary. The remarks on the amendment proposed by Santhanam under entry 50 of List I of the Seventh Schedule may be seen in this connection.

Entry 44

K. Santhanam: That in entry 44 in List II, the words "sports and entertainments" be inserted at the end.

Note: This amendment seeks to add "sports and entertainments" to entry 44 of List II (State List). There is no entry in the State List mentioning specifically "sports and entertainments". Doubts may therefore be entertained as to whether in the absence of specific mention of those subjects either in List II or in List III they will be treated as a matter falling within entry 91 of List I. This amendment may therefore be accepted, but it should be revised as follows :

In entry 44 of List II (State List) of the Seventh Schedule, for the words

"and cinemas" the words "cinemas, sports, entertainments and amusements" be substituted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the redraft.

Entry 45

K. Santhanam: That in entry 45 in List II, the words "crossword puzzles and other competitions" be inserted at the end.

Note: This amendment is hardly necessary as the word "gambling" mentioned in item 45 of List II might very well include crossword puzzles and other competitions, if the element of skill is so reduced as to make them games of chance.

Entry 52

B. Gopala Reddi: That for entry 52 in List II, the following be substituted :

Duties of excise on all goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in the territory of India.

Note: The remarks on the amendment proposed by Gopala Reddi under entry 86 in List I of the Seventh Schedule would also apply to this amendment.

K. Santhanam: That in entry 52 in List II of the Seventh Schedule, the words "coming into the Province from outside" be substituted for the words "manufactured or produced elsewhere in the territory of India".

Note: If this amendment is accepted, then the countervailing duties of excise referred to in item 52 of List II would include duties on goods manufactured or produced outside the territory of India and imported into the State which are really customs duties specified in item 85 of List I (Union List) and not excise duties. This amendment cannot therefore be accepted.

Entry 58

The Ministry of Industry and Supply has suggested that this entry should be transferred to List I (Union List) of the Seventh Schedule.

Note: This involves a question of policy.

The Ministry of Works, Mines and Power has suggested that for entry 58 in List II of the Seventh Schedule the following entry should be substituted :

58. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the State of goods liable to taxes within the State on sale, turnover or purchase, subject to any limitations imposed by Parliament by law relating to the development of inter-State rivers and river-valleys for purposes of flood control, irrigation, navigation and hydro-electric power; taxes on advertisements.

The Ministry feels that this amendment is necessary to prevent pernicious taxation by the Provinces on multi-purpose river valley projects sponsored by the Central Government. For instance, the Damodar Valley Corporation may well be handicapped if Bihar and/or West Bengal impose unreasonable taxes on the sale of water for irrigation.

Note: If the goods are the property of the Union then article 264 will

prevent the imposition of any tax by the State on such goods. If not then the question whether Parliament should be given power to impose such limitations is a question of policy. If any power is to be reserved to Parliament to impose any limitation on the exercise of the power to levy the taxes referred to in the existing entry 58 by the Legislatures of States, then this amendment cannot be accepted in this form but it would be necessary to insert a provision in the Constitution on the lines of articles 256 and 265 thereof.

Entry 60

The Ministry of Works, Mines and Power suggested that for entry 60 in List II of the Seventh Schedule the following entry should be substituted :

60. Taxes on the consumption or sale of electricity, subject to any limitations imposed by Parliament by law.

The Ministry feels that this amendment is necessary to prevent pernicious taxation by the Provinces on electrical development projects sponsored by the Central Government. For instance, the Damodar Valley Corporation may well be handicapped if Bihar and/or West Bengal impose unreasonable taxes on the sale or consumption of electricity for industrial or other purposes.

Note : This amendment involves a question of policy, and can hardly be accepted in this form. If any power is to be reserved to Parliament to impose any limitation on the exercise of the power to levy the taxes referred to in the existing entry 60 by the Legislatures of States, then it would be necessary to insert a provision in the Constitution on the lines of articles 256 and 265 thereof.

Entry 62

K. Santhanam : That for entry 62 in List II of the Seventh Schedule the following be substituted :

62. Taxes on entertainments, amusements, betting and gambling, racing and other such luxuries.

Note : The effect of this amendment will be to cut down the scope of taxable "luxuries" e.g., a tax on servants would probably be within the unamended entry, but not within the entry as amended.

The Ministry of Industry and Supply considers that the word "luxuries" in entry 62 in List II of the Seventh Schedule is vague and has suggested that the words "Taxes on luxuries, including" should be deleted from that entry.

Note : The effect of this amendment will be to cut down the scope of this entry; for example, a tax on servants should probably be within the unamended entry but not within the entry as so amended.

Entry 64

Drafting Committee : That entry 64 in List II be omitted.

Note : The Drafting Committee recommended that entry 64 relating to inquiries and statistics for the purpose of any of the matters in the State List be omitted from List II (State List) and for entry 86 in List III (Concurrent List) the following entry be substituted :

36. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to delete entry 64.

New entries

R. K. Sidhva: That the following new entry be added at the end of List II:

The terminal tax on goods or passengers carried by railway, sea or air.

Note: The remarks on the amendment proposed by Sidhva under entry 83 in List I of the Seventh Schedule would also apply to this amendment.

K. Santhanam: That entry 19 in List III be deleted and inserted as entry 67 in List II.

Note: If entry 19 of List III (Concurrent List) is transferred to List II (State List), then difficulties may arise with regard to legislation in respect of places for reception and treatment of lunatics, like the Ranchi Mental Hospital, where lunatics from different States are received and kept under detention and for treatment. If entry 19 is retained in List III (Concurrent List), then the Centre may legislate with regard to such places.

K. Santhanam: That entry 23 in List III be deleted and inserted as entry 68 in List II.

Note: It might be advantageous to have uniformity of law relating to prevention of cruelty to animals throughout the territory of India and as such legislation by the Centre would better secure such uniformity. Entry 23 should not therefore be transferred from the Concurrent List to the State List.

K. Santhanam: That entry 24 in List III be deleted and inserted as entry 69 in List II.

Note: This amendment seeks to transfer entry 24 from List III to List II. Vagrants and migratory tribes travel from Province to Province and it would therefore be more convenient to regulate their activities and movements by Central legislation than by separate Provincial laws. This entry should therefore be retained in the Concurrent List.

K. Santhanam: That entry 31 in List III be deleted and inserted as entry 70 in List II.

Note: Inland waterways are spread over more than one State and there should be uniformity of law relating to shipping and navigation on such waterways. It would therefore be advantageous to retain this entry (entry 31) in the Concurrent List so that the Centre may have also power to legislate with regard to the subject.

LIST III (CONCURRENT LIST)

Entry 7

Note: The Special Committee agreed with the Drafting Committee that

all matters in respect of which parties are now governed by their personal law should be put in the Concurrent List. (See footnote to entry 7 of List III of Seventh Schedule to the Draft Constitution.*) There was, however, a difference of opinion amongst the members of the Special Committee as to whether "succession to agricultural land" should be in the Concurrent List and a large number of members of the committee favoured its inclusion in the State List. It was accordingly decided by the Special Committee that this matter should be left for decision by the Constituent Assembly.

Entry 8

K. Santhanam : That in entry 8 in List III, the words "registration of deeds and documents" be deleted.

Note : It is not clear why it is intended to omit "registration of deeds and documents" from item 8 of List III (Concurrent List). No separate entry for inclusion of "Registration of deeds and documents" in the State List has been proposed by the sponsor of this amendment and the effect of such omission would be that by virtue of article 223 read with entry 91 of List I, Parliament will have exclusive power to make laws with respect to registration of deeds and documents which would hardly be desirable. Even if these provisions are altered so as to put the "residuary" subject into the Concurrent List, nothing would be gained by the proposed omission ; for the matter omitted would fall into the "residue" and therefore back into the Concurrent List. Further, for the sake of maintaining uniformity of law relating to registration of deeds and documents throughout the territory of India and of giving at the same time power to the State to make special provisions to suit special conditions in the State, it would be more convenient to retain this item in the Concurrent List.

Entry 19

K. Santhanam : That entry 19 in List III be deleted and the same be inserted as entry 67 in List II.

Note : The remarks on amendment proposed by Santhanam on new entries under List II would apply to this amendment.

Entry 23

K. Santhanam : That entry 23 in List III be deleted and the same be inserted as entry 68 in List II.

Note : The remarks on amendment proposed by Santhanam on new entries under List II would apply to this amendment.

Entry 24

K. Santhanam : That entry 24 in List III be deleted and the same be inserted as entry 69 in List II.

Note : The remarks on amendment proposed by Santhanam regarding new entries under List II would apply to this amendment.

New entry 25-A

Drafting Committee: That after entry 25 in List III, the following entry be inserted.

25-A. State Public Service Commissions.

Note: See note on amendment proposed by the Drafting Committee to entry 7 in List II.

Entry 26

K. Santhanam: That in entry 26 in List III of the Seventh Schedule, the words "maternity and children's allowances" be added at the end.

Note: It is hardly necessary to add "maternity and children's allowances" in item 26 of List III (Concurrent List) as "Welfare of labour" would clearly include such allowances, as they are ordinarily understood. If, however, this amendment is accepted, then it may be revised as follows:

In entry 26 of List III of the Seventh Schedule, the following be added at the end:

maternity benefit and children's allowances.

Drafting Committee: That for entry 26 in List III the following be substituted:

26. Welfare of labour including provident funds, employers' liability, workmen's compensation, pensions and all forms of social insurance; conditions of labour.

Note: See note on amendment proposed by the Drafting Committee to entry 41 in List II.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to redraft entry 26 in the following manner:

26. Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

Entry 26-A

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to insert the following new entry:

26-A. Social insurance and social security.

Entry 27

Drafting Committee: That for entry 27 in List III, the following be substituted:

27. Employment and unemployment.

Note: See note on amendment proposed by the Drafting Committee to entry 41 in List II.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

Entry 28-A

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to insert the following new entry:

28-A. Commercial and industrial monopolies, combines and trusts.

Entry 30

K. Santhanam : That in entry 30 in List III, the words "but not including taxes on the consumption and sale of electricity" be added at the end.

Note : The amendment is unnecessary ; for, taxes on the consumption and sale of electricity are included in entry 60 of the State List. There being thus a special entry relating to this matter, it will be held, on the general principles of interpretation, to be excluded from the general entry relating to electricity.

*Entry 32***Letter from the Ministry of Information and Broadcasting July 29, 1948 :**

I am directed to invite your attention to item 32 of List III of the Seventh Schedule to the Draft Constitution of India and to say that the Government of India consider that the subject "Sanctioning of cinematograph films for public exhibition" should be transferred to List I of the Schedule.

2. At present, the powers under the Cinematograph Act are exercised by the Provincial Governments and censoring of films for public exhibition in India is a Provincial responsibility. But it is becoming increasingly clear that a decentralized system of censorship is not only unsatisfactory from the point of view of producers and importers of films and the public but is contrary to the interests of public policy. Under the present arrangement there is more than one Board constituted by different Provincial Governments and the standards and principles of censorship vary from Board to Board. Films passed by one Board are uncertified in another Province and films refused certification by a Board are passed by another. Moreover, the motion picture film has developed from being just a means of entertainment into a medium conveying ideas and impressions capable of influencing public opinion in the moral, social and political fields. It is, therefore, imperative that the films should be examined with the policy of the State in various matters in mind and it is not possible to do this unless censorship is centralized. Similarly, it is desirable to achieve co-ordination between the principles and standards of censorship in the Indian States and those applicable to the Provinces and such co-ordination can only be achieved by a centralized censorship authority.

3. It is considered that sanctioning of cinematograph films for public exhibition should be the function of the Central Government. The Provincial Governments have been consulted on this point and the trend of opinion is in favour of centralization of censorship. It is proposed to promote legislation to enable the Central Government to set up a Central Board of Censors in place of the present Provincial Boards. For the proper discharge of the functions of censorship by the Central Government, it is necessary for them to have exclusive legislative and executive authority in regard to the subject "Sanctioning of cinematograph films for public exhibition". I am, therefore, to request that necessary steps be taken to transfer this subject from the Concurrent List to the Union List in the Seventh Schedule

of the Draft Constitution of India.

Note: The proposal involves a question of policy. The object of the Ministry will be achieved even if the entry in question is retained in the Concurrent List for in that case the Centre will not only have the power to legislate but in view of the proviso to clause (1) of article 60, Parliament may by law confer executive power on the Centre when legislating with regard to this subject. It is therefore hardly necessary to transfer this item to List I for the purpose of centralizing censorship.

As regards the criticism that the motion picture film is not only a means of entertainment but is a medium conveying ideas and impressions capable of influencing public opinion in the moral, social and political fields and therefore it is imperative that the films should be examined with the policy of the State in various matters in mind which can only be possible if censorship is centralized, it may be pointed out that the same considerations also apply to entry 18 "Newspapers, books and printing presses" in the Concurrent List but it has not been thought desirable to transfer this entry to List I (Union List) for the purpose of centralizing censorship of news and publications.

If, however, it is decided to accept the proposal, then the following amendments would be necessary :

- (1) In List I of the Seventh Schedule, after entry 51, the following entry be inserted :

51-A. The sanctioning of cinematograph films for exhibition.

- (2) In List III of the Seventh Schedule, entry 32 be omitted.

Entry 34

K. Santhanam : That entry 34 in List III be deleted.

Note: Item 34 has been inserted in List III in accordance with the recommendation of the Union Powers Committee.

New entries

Drafting Committee : That after entry 34 in List III, the following new entries be inserted :

34-A. Reclamation of waste lands.

34-B. Forests.

34-C. Fisheries.

Note: See notes on amendment proposed by the Drafting Committee for the omission of entries 27 and 29 in List II.

Entry 35

Drafting Committee : That entry 35 in List III be omitted.

Note: The Special Committee did not agree to the recommendation of the Drafting Committee contained in the footnote to entry 35 of List III of the Seventh Schedule of the Draft Constitution that the principles on which compensation was to be determined for property acquired or requisitioned should in all cases be in the Concurrent List. The Special Committee by a majority decided that entry 35 should be omitted from List

III of the Seventh Schedule and that consequential changes should be made in entry 43 in List I and entry 9 in List II. (See also amendments proposed by the Drafting Committee to entry 43 in List I and entry 9 in List II.)

K. Santhanam : That entry 35 in List III of the Seventh Schedule be deleted.

Note : This amendment may be accepted. The Special Committee has also recommended the deletion of this item from List III and the making of consequential alterations in item 43 of List I and item 9 of List II. Necessary consequential alterations have been suggested separately in these two items.

The Ministry of Industry and Supply has suggested that entry 35 in List III of the Seventh Schedule should be transferred to List I of that Schedule.

Note : This amendment involves a question of policy. The Special Committee has suggested that entry 35 in List III (Concurrent List) of the Seventh Schedule should be omitted.

(See amendments proposed by the Drafting Committee and Santhanam to entry 35 in List III and note thereon.)

Entry 36

Drafting Committee : That for entry 36 in List III, the following be substituted :

36. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.

Note : See note on the amendment proposed by the Drafting Committee regarding the deletion of entry 64 in List II.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

15. Inter-State Trade and Commerce

ARTICLE 244

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That the proviso to article 244 be deleted.

Note : The proviso to article 244 has been inserted in view of the provisions contained in article 306 of the Draft. If article 306 is retained, this proviso should also be retained.

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that clause (b) of article 244 should be deleted as this clause negatives articles 16 and 243 by its vague generality.

Note : Clause (b) of article 244 is based on the recommendation of the Advisory Committee as adopted by the Constituent Assembly. The Drafting Committee has considered it necessary to substitute for the words "in the interest of public order, morality or health" which occur in the said recommendation, the words "in the public interests".

The West Bengal Legislative Assembly is of opinion that the power to

impose restrictions on the freedom of inter-State trade, commerce or intercourse conferred by clause (b) of article 244 is too wide and therefore recommends that such power should be limited to the imposition of restrictions for the purpose of the administration of Provincial duties of excise or for the purpose of controlling price and distribution of commodities in the national interest.

Note : This involves a question of policy.

The Ministry of Industry and Supply considers that the word "imported" in clause (a) of article 244 as applied to the movement of goods from one State into another is unhappy and inappropriate as the normal significance of "import" is "the bringing in" from any country across a customs frontier and the use of the word in the present context might imply that the States in the Union of India are or are intended to be self-contained economic units.

Note : In clause (a) of article 244, the word "imported" has been used in the sense of bringing in from another State and not from any country across the customs frontier. In fact, entry 26 of the Union List in the Seventh Schedule to the Draft Constitution which corresponds to entry 19 of the Federal Legislative List in the Seventh Schedule to the Government of India Act, 1935, contemplates "import" and "export" otherwise than across the customs frontier. There is thus hardly any ambiguity in the expression "imported" used in clause (a) of article 244.

The Ministry of Industry and Supply has expressed the view that clause (b) of article 244 is open to serious objection on principle and should be deleted altogether. The Ministry has pointed out that it is not possible to foresee the circumstances in which the freedom of trade, commerce or intercourse with a State will need to be interfered with by that State in the public interest, unless it be on the basis of discrimination between the residents of one State and another, and this would be wholly contrary to the spirit of the Constitution.

Note : During a period of depression owing to destruction by flood or otherwise of crops in any particular State, it may be necessary for the State to impose restrictions on the export of any crop from such State in the public interests. Similarly on the outbreak of any epidemic disease, like plague, in a State it may be necessary for a neighbouring State to impose restrictions on the freedom of intercourse between the inhabitants of that State with the inhabitants of such neighbouring State. Clause (b) of article 244 is intended to give power to the State to impose such restrictions.

Comments of Alladi Krishnaswami Ayyar : In regard to inter-State trade there are three main provisions in the Draft Constitution :

- (i) the freedom of inter-State trade secured by article 16;
- (ii) subject to an interference by federal law;
- (iii) an interference by a Province or State law to the extent provided in item 33, List II.

The power of interference under sub-clause (b) of article 244 is too

drastic and much wider than that provided in the original Draft. Would not this provision practically nullify the freedom of trade secured by article 16 as the expression 'interests of the public' is vague and uncertain and cannot be the subject of judicial review ?

Comments by V. T. Krishnamachari, B. H. Zaidi, Sardar Singhji of Khetri and Sardar Jaidev Singh : Article 16 defines the fundamental rights regarding freedom of trade, commerce and intercourse throughout the Union, subject, however, to certain exceptions specified in article 244. In this connection, reference may be made to paragraph 5 of the Interim Report submitted by the Advisory Committee on the subject of fundamental rights, which may be quoted here *in extenso* :

Clause 10 deals with the freedom, throughout the Union, of trade, commerce and intercourse between the citizens. In dealing with this clause we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenues and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States, in the light of their existing right, with a view to giving them time, up to a maximum period to be prescribed by Constitution, by which internal customs could be eliminated and complete free trade established within the Union.

Articles 16 and 244 are not in consonance with the letter and spirit of the observations made in the paragraph cited above in so far as these relate to the levy of internal customs by some of the Indian States. The States would, therefore, urge that article 244 may be amended accordingly.

Note : To meet the above criticism, the Drafting Committee recommended that article 244 should be changed as shown in the amendment below.

Drafting Committee : That for article 244, the following be substituted :
 244. *Restriction on trade, commerce and intercourse between States :*
 Notwithstanding anything contained in article 16 or in the last preceding article of this Constitution—

(a) it shall be lawful for any State—

(i) to impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced ; and

(ii) to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse with that State as may be required in the public interest :

Provided that during a period of five years from the commencement of this Constitution the provisions of sub-clause (ii) of this clause shall not apply to trade or commerce in any of the commodities mentioned in clause (a) of article 306 of this Constitution ;

(b) the Union may enter into an agreement with a State for the time

being specified in Part III of the First Schedule with respect to the levy and collection of any tax or duty leviable by the State on goods imported into the State from other States or on goods exported from the State to other States, and any agreement entered into under this clause shall continue in force for a period not exceeding ten years from the commencement of this Constitution :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission constituted under article 260 of this Constitution he thinks it necessary to do so.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

ARTICLE 246

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That the following proviso be added to article 246 :

Provided, however, that nothing in this article shall be deemed to affect the jurisdiction of the Supreme Court under article 109.

Note : The jurisdiction of the Supreme Court under article 109 extends to a dispute involving any question on which the existence or extent of a legal right depends. Nothing in article 246 takes away such jurisdiction. The functions of the inter-State Council under article 246 are merely advisory. It is therefore hardly necessary to add the proposed proviso to this article.

16. *Services under the Union and the State Services*

SERVICES

ARTICLE 282

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in paragraph (b) of the proviso to clause (2) of article 282 after the word "practicable", the words "or undesirable in public interests" be inserted.

Note : It is not clear why the words "or undesirable in public interests" are sought to be inserted after the word "practicable" in clause (b) of the proviso to clause (2) of article 282. Perhaps it is intended that a civil servant guilty of a serious offence which requires his immediate dismissal or removal from service should not be allowed to continue in service even for a short while and accordingly it is sought to be provided that in such cases the civil servant shall not be given any opportunity to show cause. But ordinarily a civil servant, who is considered to be guilty of such an offence, is suspended before any action is finally taken against him, and

during the period of suspension he is given a reasonable opportunity to show cause against the action proposed to be taken. There is thus hardly any necessity for the insertion of the words proposed by this amendment.

If, however, it is decided to accept this amendment, then it should be redrafted as follows:

In clause (b) of the proviso to clause (2) of article 282, after the words "reasonably practicable" the words "or it is undesirable in the public interests" be inserted.

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that clause (b) of the proviso to clause (2) of article 282 should be deleted as he considers that condemnation of persons unheard should never be allowed and that mere recording of reasons in writing is no safeguard and he apprehends that the intended exception will have the tendency to grow into official rule.

Note: Clause (b) of the proviso to clause (2) of article 282 is merely an enabling provision which will be exercised in extraordinary circumstances where a civil servant is guilty of such an offence that his immediate dismissal or removal is necessary in the public interest. Such a provision also exists in the Government of India Act, 1935, [see proviso (b) to sub-section (3) of section 240], and this power has been very sparingly used. There is therefore no harm in retaining this provision.

**EXTRACTS FROM THE LETTER FROM THE HOME MINISTER, VALLABHBHAI PATEL
TO THE PRIME MINISTER
April 27, 1948**

In the Cabinet meeting of the 30th April the question of constitutional provisions in relation to Services has been put down for discussion. I need hardly say how important and essential it is that such provisions are inserted in our Constitution. The Indian Independence Act already carries a provision regarding terms and conditions of existing members of the Indian Civil Service, the Indian Police and other Secretary of State's Services. In consultation with, and with the unanimous support of, Provincial Governments, we have evolved two new Services to take the place of the Indian Civil Service and the Indian Police viz. the Indian Administrative Service and the Indian Police Service. We have made recruitment, have issued rules of recruitment, discipline, control, etc. and have entered into agreements with candidates for these Services... The Draft Constitution does not provide for an All-India Service of this type. We will, therefore, have to make provision for these Services as well in the new Constitution.

2. I need hardly emphasize that an efficient, disciplined and contented service, assured of its prospects as a result of diligent and honest work, is a *sine qua non* of sound administration under a democratic regime even more than under an authoritarian rule. The service must be above party

and we should ensure that political considerations either in its recruitment or in its discipline and control are reduced to the minimum, if not eliminated altogether... In an All-India Service, it is obvious, recruitment, discipline and control, etc. have to be tackled on a basis of uniformity and under the direction of the Central Government which is the recruiting agency... You will recall that all these matters have been settled at a conference of Prime Ministers convened in 1946 and the details have been settled by correspondence with Provincial Governments. No criticism, therefore, can be made that either in the formation of these Services or in the preparation of necessary rules and regulations Provincial susceptibilities and views find no place. Indeed, there was a remarkable unanimity between the views of the Provincial Governments and those of the Central Government throughout on these questions. Any pricking of the conscience on the score of provincial autonomy or on the need for sustaining the prestige and powers of provincial Ministers is, therefore, out of place.

3. I am also convinced... that it would be a grave mistake to leave these matters to be regulated either by Central or Provincial legislation. Constitutional guarantees and safeguards are the best medium of providing for these Services and are likely to prove more lasting. On the other hand, if we leave matters to be regulated by Central or Provincial legislation, the chances of interference with the Services and seriously prejudicing their efficiency on account of the interaction of Central and Provincial politics are closer. Moreover, in regard to the existing Services there is both a moral and a legal obligation on our part to ensure that their conditions are not prejudicially affected by any future legislation. You will recall that during our negotiations over the transfer of the Secretary of State's Services to our control considerable emphasis was laid on this aspect of the case and indeed it was on a clear understanding from us that we would see that the rights and conditions of service of the existing members of the Secretary of State's Services are not prejudicially affected but are fully safeguarded that the British Government agreed to exclude Indians on the compensation scheme. I feel we are in honour bound to carry out that undertaking and the only way that undertaking can be fully and satisfactorily discharged is to make provision in the Constitution itself.

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LETTER FROM THE MINISTRY OF HOME AFFAIRS No. 20/11/48-G.S.
TO THE CONSTITUENT ASSEMBLY SECRETARIAT

October 15, 1948

I am directed to invite your attention to Chapter I—Services—of Part XII relating to the Services under the Union and States of the Draft Constitution of India and to say that the provisions of that Chapter

have been examined by the Government of India, and it has been decided that steps should be taken to secure the substitution for that Chapter of a revised Chapter in accordance with the draft (enclosed). The Hon'ble the Home Minister proposes to sponsor in the Constituent Assembly such amendment as may be necessary for this purpose. I am to request that the necessary amendment may be put into proper form for purposes of insertion in the Draft Constitution and included in the agenda of the Constituent Assembly.

REVISED DRAFT

CHAPTER I

THE CIVIL SERVICES

281. *Same as art. 281 of Draft Constitution. Interpretation.*—In this Part, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I of the First Schedule.

282. *New provision corresponding to sec. 240(1) of the Government of India Act. Tenure of office of persons employed in the Civil Services.*—(1) In this article, references to members of a civil service of the Union or a State include persons holding civil posts under the Union or the State, as the case may be.

(2) Except as expressly provided by this Constitution, every person who is a member of a civil service of the Union or an all-India service holds office during the pleasure of the President, and every person who is a member of a civil service of a State holds office during the pleasure of the Governor of the State.

(3) *New provision corresponding to sec. 240(2) of the Government of India Act.*—No such person as aforesaid shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(4) No such person as aforesaid shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this clause shall not apply—

(a) Where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ;

(b) Where an authority empowered to dismiss a person or remove or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

282-A. *New Provision (Modelled on art. 226 of the Draft Constitution). All India Services.*—(1) Notwithstanding anything in Part IX of this Constitution, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is

necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India Services common to the Union and the States, and, subject to the other provisions of this Chapter, for regulating the recruitment and the conditions of service of persons appointed to any such service.

(2) *New provision (Upon such declaration as aforesaid of the Council of States).*—The services known as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under the provisions of clause (1) of this Article.

282-B. *Same as art. 282(1) of the Draft Constitution. Recruitment and conditions of service of persons employed in civil services of the Union or a State.*—Subject to the other provisions of this Chapter, Acts of the appropriate Legislature may regulate the recruitment and the conditions of service of persons appointed to the civil services of, and civil posts under, the Union or a State.

283. *Corresponds to art. 283 of the Draft Constitution. Transitional provisions.*—(1) Until other provision is made in this behalf under this Constitution any *existing laws* applicable to any civil service or post which continues to exist after the commencement of this Constitution as an *all-India-Service* or as a civil service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

(2) *New provision corresponds to sec. 10(2) of the Indian Independence Act.*—Except as expressly provided by this Constitution, every person who, being a member of a service specified in clause (2) of art. 282-A or a service formerly known as an all-India Service continues on and after the commencement of this Constitution to serve under the Union or a State shall be entitled to receive from the Governments of the Union and the States which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters and the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the commencement of this Constitution.

EXPLANATORY NOTES PREPARED BY THE MINISTRY OF HOME AFFAIRS ON THE REVISED DRAFT

(i) **Tenure of civil servants** [*vide* clauses (2) and (3) of article 282 of the revised draft] : 1. There are at present three important constitutional provisions governing the tenure of all civil servants. The first is that they hold office during His Majesty's pleasure. The second is that the power to remove or dismiss them cannot be delegated to any authority lower in rank than the authority competent to appoint them. The third is that the authority competent to dismiss, remove or reduce a civil servant is required to give him

an opportunity to show cause against such action. The Drafting Committee has taken over the last of these provisions from section 240(3) of the present Constitution Act and inserted it as article 282(2) in the Draft Constitution. It is considered necessary that the other two provisions which at present find place in the present Constitution Act as sections 240(1) and 240(2) should be taken over with appropriate changes into the new Constitution. The first is an important safeguard for Governments, as employers : and the second for the civil servants as employees. Hence clauses (2) and (3) of article 282 of the revised draft.

2. The revised draft also embodies the following changes viz :

(1) While articles 282(1) and 283 of the Draft Constitution refer to the public services of the Union or any State, article 282(2) refers only to civil services and posts. The provisions of this Chapter may conveniently be confined to civil services and posts.

(2) The definition in clause (1) of revised article 282 helps to avoid repetition in the subsequent clauses.

(3) In clause (1) of revised article 283, the wider expression "existing laws", which is defined in article 303(1)(i) of the Draft Constitution, is suggested instead of "rules which are in force immediately before the commencement of this Constitution", in order to cover the laws, orders and regulations which are now applicable to civil services and posts. The reference to "civil services" instead of "public services" is consequential on the other changes proposed in this Chapter and the reference to "an All-India service" is consequential on clause (2) of article 282-A.

(ii) **Guarantee of certain service rights** [*vide* clause (2) of article 283 of the revised draft] : 1. When the Government of India Act, 1935, was passed, provision was made in it for the protection of the service rights of members of the former All-India Services. The most important of these provisions was in the proviso to section 247(1). According to that proviso, the rule-making power vested in the Secretary of State cannot be exercised "so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his Service or was appointed to his post". These provisions and the control vested in the Secretary of State over the authorities in India under whom the officers were serving were the guarantees of service rights enjoyed by members of the former All-India Services.

2. During the negotiations which preceded the transfer of power the position of the Services after the termination of the control of the Secretary of State was considered. It was agreed by both His Majesty's Government and the Government of India that the present service rights of all members, whether Indian or European, should be guaranteed by the new Governments, if the officers were willing to continue in service and were retained in service by the new Government. It was also agreed that if any officer,

whether Indian or European, was willing to continue in service but was not retained in service, then a compensation should be given by Governments in India in addition to proportionate pension admissible under the rules. There was a difference of opinion between the Government of India and His Majesty's Government on whether compensation should be paid for loss of career, in addition to proportionate pension, if an officer was unwilling to continue in service though the Government were willing to retain him in service. Eventually, a scale of compensation was decided upon by His Majesty's Government and offered to European members of the All-India Services, including those who retired prematurely of their own accord. Accordingly most of the European officers have retired on proportionate pension with compensation. A very few Indian officers who were willing to continue in service but were not retained by the Governments concerned have also retired with proportionate pension and compensation. The remaining members of the Services have continued in service on the basis of a joint guarantee of existing service rights given by the Government of India and the Provincial Government concerned.

3. The terms of this guarantee are to be found in the documents mentioned below :

(i) The earliest reference is contained in an announcement made by the Viceroy on the 30th April, 1947 and was made in the following terms :

The Government of India are naturally and rightly most anxious and His Majesty's Government share their anxiety that the administration shall not be weakened by the loss of experienced officers. To this end, the Government of India undertake that those members of the Secretary of State's Services who continue to serve under the Government of India after the transfer of power shall do so on their present terms as to scales of pay, leave, pension, rights and safeguards in the matter of discipline. . .

So far as the Provinces at present in the Union are concerned, the guarantee was given by the Government of India on behalf of themselves and the Provincial Governments. The Provincial Governments later confirmed the undertaking given by the Government of India on their behalf.

(ii) On the 18th June, 1947, the Government of India issued a letter addressed to each individual officer of the former All-India Services asking them to indicate whether they desired to continue in service on the conditions specified in that letter. The letter referred to the Viceroy's announcement of the 30th April mentioned already, the undertaking given by the Government of India to officers who wished to continue in service, and proceeded to explain the scope of the guarantees in respect of pay, pension and disciplinary matters.

(iii) On the same day the Provincial Governments were also addressed and their opinion sought on whether the basis on which continuance in service was being arranged should be embodied in the form of a contract and/

or whether specific provision should be made on a statutory basis. It was suggested in this letter that the provisional instrument which would provide for the transfer of power to India should include the guarantee in the first instance and later that provision should be made in the Constitution that may be enacted as a result of the decisions of the Constituent Assembly. Except for two Provinces, which considered that a contract would suffice, all other Provinces favoured a specific statutory guarantee.

(iv) Steps have since been taken to secure the execution of agreements in the prescribed form between individual officers on the one hand and the Provincial Governments concerned and the Central Government on the other. The execution of these agreements will be completed shortly.

(v) The first step in the process already visualized of providing a statutory guarantee has also been taken. Section 10(2) of the Indian Independence Act has made specific provision for the guarantee of existing service rights. The stage has now been reached for the second step in the process of providing a guarantee on a statutory basis, for the Indian Independence Act will be repealed when the new Constitution is enacted by the Constituent Assembly.

4. In view of the foregoing course of events, the present position may be summarized as follows :

(i) Existing service rights of members of the former All-India Services (otherwise known as the Secretary of State's Services) were statutorily guaranteed since 1935.

(ii) The Government of India and all the Provincial Governments in India have confirmed the continuance of these rights—

(a) on the one hand to His Majesty's Government who have, therefore, arranged for the provision of statutory guarantee in the Indian Independence Act, and

(b) on the other hand to the officers concerned individually, by exchange of letters, and formal agreements which are being executed.

(iii) The Government of India and most of the Provincial Governments concerned desire that the commitments they have entered into should be endorsed by appropriate provision made in the Constitution, and the officers concerned have been led to expect that this would be done.

5. The point for consideration is whether specific provision should be made accordingly, or whether it may be dispensed with for the reason mentioned by the Drafting Committee, viz., "the future Legislatures in this country, as in other countries, may be trusted to deal fairly with the Services". The Ministry of Home Affairs takes the view that, in the circumstances, the former course should be followed. The reasons are as follows :

First : Either there is the possibility of some of the Legislatures failing to honour the commitments or there is not. If there is not, the insertion of a clause in the Constitution would do no harm. If there is such a possibility,

specific provision is essential both from the point of view of the officers concerned and the Governments which have entered into commitments.

Secondly: Having regard to the previous history of the case narrated above, failure of the Constituent Assembly to insert a provision is bound to be regarded as unwillingness to endorse the commitments entered into. It will thereby create doubts and apprehensions, which it is essential in the public interest should not be created. On the other hand, the making of a specific provision would foster stability and an independent outlook which are essential for the efficiency and effectiveness of the services.

6. Attention should now be drawn to the specific terms of article 283 (2) of the revised draft. It reproduces substantially the wording of section 10(2) of the Indian Independence Act. It contains, however, something more. The clause is so worded as to give the benefit of the guarantee not merely to the present members of the former All-India Services but also the present members of the two new All-India Services *viz.*, the Indian Administrative Service and the Indian Police Service. The numbers involved are few. It is desirable that they should also be included in the statutory provision, because the Indian Administrative Service and the Indian Police Service are intended to be the successors of the Indian Civil Service and the Indian Police respectively. If a stand-still provision is made applicable to the existing members of the latter, it is only fair that it should be made applicable to the existing members of the former also. This does not imply any limitation on the authority of Parliament to regulate conditions for future entrants to these Services, or any other All-India Service which may be created by it.

CONSTITUTIONAL ADVISER'S NOTE ON THE REVISED DRAFT PREPARED BY THE MINISTRY OF HOME AFFAIRS

The amendments proposed by the Ministry of Home Affairs seek to provide for the creation of one or more All-India Services common to the Union and the States and especially to add a new provision on the lines of section 10(2) of the Indian Independence Act, 1947, providing for the safeguards contained in that section in respect of members of the Secretary of State's Service who continue on and after the commencement of the Constitution to serve under the Government of the Union or of a State.

Clause (3) of article 286 already contains a reference to the All-India Services, and accordingly a provision may be included in the Constitution for the creation of such Services. There does not also appear to be any objection to continue the safeguards provided in the Indian Independence Act, 1947, with respect to the Secretary of State's Services. If the amendments proposed above are accepted in substance, then it will suffice to make the following amendments in Chapter I of Part XII which deals not only with

the civil services, but with all public services and posts in connection with the affairs of the Union or any State :

(1) For article 282, the following articles be substituted* :

282. *Recruitment and conditions of service of persons serving the Union or a State* : Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and the conditions of service of persons appointed to public services, and to posts in connection with the affairs, of the Union or any State.

282-A. (1) *Tenure of office of persons employed in civil capacities under Union or a State* : Except as expressly provided by this Constitution, every person who is a member of a civil service of the Union or an All-India Service holds office during the pleasure of the President, and every person who is a member of a civil service of a State holds office during the pleasure of the Governor of the State.

(2) No such person as aforesaid shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this clause shall not apply—

(a) where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ;

(b) where an authority empowered to dismiss a person or remove or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

(4) In this article, references to members of a civil service of the Union or a State include references to persons holding civil posts under the Union or the State, as the case may be.

282-B. (1) *All-India Services* : Notwithstanding anything in Part IX of this Constitution, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States, and subject to the other provisions of this Chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.

(2) The services known on the date of commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

*See the amendment proposed by the Drafting Committee to article 282.

(2) For article 283, the following articles be substituted* :

283. *Transitional provisions* : Until other provision is made in this behalf under this Constitution, all laws which were in force immediately before the commencement of this Constitution and were applicable to any public service or any post which continues to exist after the commencement of this Constitution as an All-India Service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

283-A. *Provision for protection of existing officers of certain services* : Except as otherwise expressly provided by this Constitution, every person who, being a member of a service specified in clause (2) of article 282-B of this Constitution or a service which was known before the commencement of this Constitution as an All-India Service, continues on and after such commencement to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before such commencement.

The Special Committee was of opinion that Chapter I relating to services in Part XII of the Draft should be retained in its present form subject to the amendment recommended by the Drafting Committee in clause (1) of article 282.

Drafting Committee : That for article 282, the following articles be substituted :

282. *Recruitment and conditions of service of persons serving the Union or a State* : Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and the conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or any State.

282-A. *Tenure of office of persons employed in civil capacities under the Union or a State* : (1) Except as expressly provided by this Constitution, every person who is a member of a civil service of the Union or an All-India Service holds office during the pleasure of the President, and every person who is a member of a civil service of a State holds office during the pleasure of the Governor of the State.

(2) No such person as aforesaid shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause

*See the amendment proposed by the Drafting Committee to articles 283 and 283-A.

against the action proposed to be taken in regard to him :

Provided that this clause shall not apply—

- (a) where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ;
- (b) where an authority empowered to dismiss a person or remove or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

(4) In this article references to members of a civil service of the Union or a State include references to persons holding civil posts under the Union or the State, as the case may be.

282-B. *All India Services* : (1) Notwithstanding anything in Part IX of this Constitution if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.

(2) The services known on the date of commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

That for article 283, the following articles be substituted :

283. *Transitional provisions* : Until other provision is made in this behalf under this Constitution, all laws which were in force immediately before the commencement of this Constitution and were applicable to any public service or any post which continues to exist after the commencement of this Constitution as an All-India Service or a service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

283-A. *Provision for protection of existing officers of certain services* : Except as otherwise expressly provided by this Constitution, every person who, being a member of a service specified in clause (2) of article 282-B of this Constitution or a service which was known before the commencement of this Constitution as an All-India Service, continues on and after such commencement to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendments.

ARTICLE 283

It has been pointed out by a critic that the effect of article 283 is to continue in force the appropriate Civil Service Rules made under the Government of India Act, 1935 until they are replaced by appropriate legislation, but till they are so replaced it will not be possible lawfully to amend any of these rules and this is likely to lead to serious administrative inconvenience as the rules in so far as they relate to matters of detail require amendment from time to time and the enactment of legislation on the subject of Civil Services may be impossible to be taken in hand soon enough after the commencement of the Constitution. It has therefore been suggested that it is desirable to incorporate in the Constitution the provisions of section 241 of the Government of India Act, 1935, which will preserve the rule-making powers of the Governments without impairing the over-riding powers of the Legislatures.

Note: The point raised requires consideration. For the removal of any administrative inconvenience it would be desirable to add the following proviso to clause (1) of article 282 or if the amendments suggested by the Ministry of Home Affairs are accepted, to article 282:

Provided that it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor of a State in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this clause/article, and any rules so made shall have effect subject to the provisions of any such Act.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the redraft contained in the note.

PUBLIC SERVICE COMMISSIONS

ARTICLES 284 TO 288

Drafting Committee: That for Chapter II containing articles 284 to 288, the following be substituted:

284. *Provisions for Public Service Commissions for the Union and for the States:* (1) Acts of the appropriate Legislature may provide for the appointment of a Public Service Commission for the Union and a Public Service Commission for each State:

Provided that there may be more than one Public Service Commission with different functions for the Union or for any State or there may be one Public Service Commission for two or more States.

(2) Every such Act shall define the composition, functions and the

procedure of the Commission and may contain such incidental or ancillary provisions as may be necessary or desirable.

Note : The Special Committee was of opinion that Chapter II of Part XII should be replaced by general provisions providing power for the constitution of Public Service Commissions for the Union and for the States by Acts of the appropriate Legislatures and for the regulation of their functions by such Acts, and that it should be made clear in such general provisions that there might be more than one Public Service Commission with different functions for the Union or for any particular State. The Drafting Committee's amendment gives effect to this suggestion. It must however be pointed out that under these amendments it would be open to the appropriate Legislature to create or not to create a Public Service Commission exactly as it thinks fit; and even if the Legislature has once created a Public Service Commission it will be open to any successor Legislature to abolish it. The result will be that the Government of the day would have the unrestricted power of making appointments to the public service. It was in order to prevent such a result that Public Service Commissions were constituted by the Constitution Act itself and provisions were inserted in the Constitution Act to free these Commissions as far as possible from any political influences. It is therefore a matter for serious consideration whether this policy should now be changed.

ARTICLE 284

S. Nagappa : That after sub-clause (b) of clause (2) of article 284, the following new sub-clause (c) be inserted:

(c) that the Commissions so set up should have the representation of the people such as backward classes particularly Scheduled Castes.

Note : This amendment which deals with the composition of the Public Service Commissions is out of place, as clause (2) of article 284 deals with the constitution of joint Public Service Commissions for two or more States. The question whether there should be a provision in the Constitution that the Public Service Commission would consist of representatives of backward classes, and particularly the Scheduled Castes, is a matter which should be left to the Constituent Assembly for decision.

ARTICLE 285

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in clause (3) of article 285, for the existing sub-clause (c), the following sub-clauses (c) and (d) be substituted :

(c) a member of the Union Commission shall be eligible for appointment as Chairman of the Union Commission or Chairman of a State Commission

but not for any other employment either under the Government of India or the Government of a State;

(d) a member of a State Commission shall be eligible for appointment as Chairman or member of the Union Commission or as Chairman of a State Commission but not for any other employment either under the Government of India or under the Government of a State.

Note: The Special Committee was of the view that Chapter II of Part XII of the Draft containing the provisions relating to Public Service Commissions should be replaced by general provisions providing power for the constitution of Public Service Commissions for the Union and for the States by Acts of the appropriate Legislatures and for the regulation of their functions by such Acts. If this suggestion of the Special Committee is adopted, then this amendment will not be necessary. If, however, it is decided to retain the provisions contained in Chapter II of Part XII of the Draft and it is also decided to accept this amendment, then this amendment should be redrafted as follows:

For sub-clause (c) of clause (3) of article 285, the following sub-clauses be inserted:

(c) a member other than the Chairman of the Union Commission shall be eligible for appointment as the Chairman of the Union Commission or as the Chairman of a State Commission but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Commission shall be eligible for appointment as the Chairman or a member of the Union Commission or as the Chairman of that or any other State Commission, but not for any other employment either under the Government of India or under the Government of a State.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the above redraft.

Gopal Narain and Ram Chandra Gupta: That for the proviso to clause (1) of article 285, the following be substituted:

Provided that—

(i) no one shall be eligible for appointment as a Chairman or a member of a Commission unless he has completed the age of 35 years;

(ii) every Chairman or member of a Commission shall be appointed for a term not exceeding five years;

(iii) every person who is appointed a Chairman or member of a Commission, shall, on the expiration of his term of office be eligible for re-appointment;

(iv) notwithstanding anything contained in the preceding two clauses, no Chairman or member of a Commission shall hold office after he has attained the age of sixty years;

(v) no Chairman or member of the Union Commission, or of a State Commission, shall be removed from office by the President or the

Governor of the State, as the case may be, except in consultation with the Chief Justice of the Supreme Court in the case of the Union Commission, or in consultation with the Chief Justice of the High Court in the case of the State Commission.

Note: This amendment which seeks to substitute a new proviso for the existing proviso to clause (1) of article 285 involves a question of policy. The new proviso proposed contains provisions relating to age qualification, tenure of office and the conditions of service of members of the Public Service Commission. Power has been conferred by clause (2) of article 285 on the President, in the case of the Union Commission, and on the Governor of a State, in the case of a State Commission, to make regulations determining the number of members of the Commission, their tenure of office and their conditions of service. Certain amendments have been separately proposed to give effect to the suggestions of the Chairman and members of the Federal Public Service Commission and the Chairman of the Provincial Public Service Commissions who met at a conference to consider the provisions of the Draft Constitution relating to Public Service Commissions. To give effect to such suggestions it has been proposed to insert a new clause (1-a) after clause (1) of article 285 to provide that the Chairman and other members of the Union Commission shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court and the Chairman and other members of a State Commission shall be removed from office in like manner and on the like grounds as a judge of the High Court of the State, or, where the State Commission serves the needs of more than one State, as a judge of the High Court of any of those States.

A proviso has been also proposed for addition to clause (2) of article 285 to give effect to the suggestions made by the Chairman and members of the Federal Public Service Commission and the Chairmen of the Provincial Public Service Commissions that neither the tenure of office nor the conditions of service of a member of the Union or of any State Commission shall be varied to his disadvantage after his appointment.

Gopal Narain and Ram Chandra Gupta: That in sub-clause (a) of clause (2) of article 285, the words "their tenure of office" be deleted.

Note: This amendment is consequential on the amendment above and it will not be necessary if it is not accepted.

Gopal Narain and Ram Chandra Gupta: That the following proviso be added to clause (2) of article 285:

Provided that regulations under sub-clause (b) of this clause shall be framed in consultation with the Commission.

Note: It will be necessary to provide some staff to enable the Commission to function from the date of its appointment. Regulations under clause (2) of article 285 making provisions with respect to such staff will have to be thus made before the appointment of members of the Commission. This

amendment if accepted will not enable such provisions to be so made before the appointment of members of the Commission. It is hardly necessary therefore to cast any constitutional obligation on the President or the Governor of a State to consult the Commission before making any provisions under sub-clause (b) of clause (2) of article 285. There is nothing to prevent the President or the Governor from consulting the Commission whenever he deems it necessary to do so. The Chairman and members of the Federal Public Service Commission and the Chairmen of the Provincial Public Service Commissions who met at a conference to consider the provisions of the Draft Constitution relating to the Public Service Commissions have not made any such suggestion for prior consultation with the Commission.

Gopal Narain and Ram Chandra Gupta : That for clause (3) of article 285, the following be substituted :

(3) On ceasing to hold office, no Chairman or other member of the Union or of any State Commission shall be eligible for any further employment either under the Government of India or under the Government of a State without the approval, in the case of an appointment in connection with the affairs of a State, of the Governor of the State and, in the case of any other appointment, of the President.

Note : To give effect to the suggestions of the Chairman and members of the Federal Public Service Commission and the Chairmen of the Provincial Public Service Commissions the following amendment has been suggested separately :

For clause (3) of article 285 the following clause be substituted :

(3) On ceasing to hold office the Chairman or any other member of the Union or of any State Commission shall not be eligible for any other appointment either under the Government of India or the Government of a State without the approval, in the case of an appointment in connection with the affairs of a State, of the Governor of the State and, in the case of any other appointment, of the President.

Drafting Committee : In clauses (1) and (2) of article 285, the words "in his discretion" be omitted.

Note : If Chapter II of Part XII containing provisions relating to Public Service Commissions is retained, then in view of the opinion expressed by the Special Committee that all references to the exercise of functions by the Governor in his discretion should be omitted, this amendment would be necessary in article 285.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

Views of the Federal Public Service Commission and of the Chairmen of the Provincial Public Service Commissions (Letter from the Chairman, Federal Public Service Commission, No. F. 8/29/48-S, May 20, 1948) : I have the honour to say that a conference of the Chairmen of the Provincial

Public Service Commissions and the Chairman and members of the Federal Public Service Commission was held at New Delhi on the 8th instant to consider the provisions relating to Public Service Commissions made in the Draft Constitution of India prepared by the Drafting Committee. I now forward herewith the recommendations of the conference with regard to some of those provisions; and request that they may be laid before the Constituent Assembly for such action as the Assembly is pleased to take with regard to them.

2. The provision in article 285(1) of the Draft Constitution for the appointment of the Chairman and members of the Union Commission is analogous to that in article 124(1) for the appointment of the Auditor-General of India, and in articles 103 and 193(1) in regard to the judges of the Supreme Court and judges of the High Courts in the States, in so far as the appointment of all the officers in question is made by the President. In regard to the Chairman and members of a State Commission, the appointment is made by the Governor of the State in his discretion. But in regard to the judges, both of the Supreme Court and the High Courts in the States, the Draft Constitution further provides that the appointment will be by the President by warrant. This is presumably due to historical reasons and in order to invest the appointments with a certain degree of solemnity; and does not seem to constitute a material difference. The conference do not, therefore, think it necessary to ask for any change in the matter of the appointment of the Chairman and members of the Public Service Commissions.

3. In regard to dismissal, however, there is a material difference. The Auditor-General [article 124(1)] and judges [article 103(4) and article 193(1) proviso (b)] can only be removed by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament; whereas provision for the termination of the appointment of a member of the Union Commission is made by regulation, which provides that the Governor-General may terminate the appointment on the expiry of six months' notice or at any time without notice if he is satisfied that a member is for any reason unable or unfit to continue to perform the duties of his office. The provision for the removal of a member of a State Commission is analogous. The conference feel that the necessity for maintaining the independence and integrity of office is the same in the case of members of a Public Service Commission as in the case of the Auditor-General and judges of the Supreme and the State High Courts. In the case of the former there is the further ground that on ceasing to hold office, legal disabilities are placed upon their further employment under the Government of India or the Government of a State [article 285(3)]. It would therefore appear reasonable that their career should not be abruptly terminated and there should be adequate safeguards for their removal. The

conference, therefore, recommend that the provision for the termination of the services of a member should be abrogated ; and that provision should be made in the Constitution for the removal of the Chairmen and members of the Public Service Commissions similar to that provided for in the case of the Auditor-General and judges.

4. The proviso to article 285(1) of the Draft Constitution provides that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least 10 years either under the Government of India or under the Government of a State. The conference is of the opinion that in order to provide for the representation of all the interests involved, this proviso should now be amended so as to provide "one-third" in place of "one-half" occurring in the first line of the proviso.

5. Article 285 (2)(a) of the Draft Constitution provides that regulations may be framed to determine the number of members of the Commission, their tenure of office and conditions of service. The conference agree that it would be appropriate to make this provision by regulation and not in the Constitution itself or by statute, but recommend that a provision analogous to the proviso to articles 104 and 124(2) should be made in the Draft Constitution whereby the tenure of office and conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

6. Article 285(2)(b) of the Draft Constitution provides for provision being made by regulation with respect to the members of the staff of the Commission and their conditions of service. The conference do not think that any change in this procedure is called for, on the analogy of articles 122(1) and 124(4) under which the salaries, allowances etc. payable to or in respect of the officers and servants of the Supreme Court and the staff of the Auditor-General shall be fixed by the Chief Justice or the Auditor-General in consultation with the President.

7. Article 285(3) of the Draft Constitution imposes disabilities on the future employment of the Chairmen and members of the Public Service Commissions under the Government of India or the Government of a State. The conference consider that in order that the services of experienced men should, if necessary, be available to Government, it is desirable that the provisions in sub-clauses (a) and (b) should be deleted and the provision made in sub-clause (c) of article 285(3) with regard to members should be made applicable to the Chairmen. The conference do not agree that all restrictions upon the future employment of the Chairman and members of a Commission should be abrogated.

The Ministry of Home Affairs (Letter from the Ministry of Home Affairs No. 51/282-48 Public, October 15, 1948) pointed out that the Ministry was inclined to the view that, from the point of view of public servants, the services could be even more strongly represented on the

Commission and does not in any case agree to the reduction proposed by the Federal Public Service Commission and of the Chairmen of the Provincial Public Service Commissions. The Ministry further pointed out that it does not support the recommendation for amendment of clause (3) of article 285 relating to the eligibility of a Chairman of a Public Service Commission for appointment under Government after ceasing to hold office.

Note: The opinion expressed by the Ministry of Home Affairs involves a question of policy. If the suggestions of the Chairman and members of the Federal Public Service Commission and the Chairmen of the Provincial Public Service Commissions are accepted, then the amendments proposed by the Drafting Committee below would be necessary.

Drafting Committee: That in the proviso to clause (1) of article 285, for the word "one-half" the word "one-third" be substituted.

That after clause (1) of article 285, the following clause be inserted:

(1-a) The Chairman and other members of a Public Service Commission shall only be removed from office, in the case of the Union Commission, in like manner and on the like grounds as a judge of the Supreme Court, and in the case of a State Commission, in like manner and on the like grounds as a judge of the High Court of the State, or where the State Commission serves the needs of more than one State, as a judge of the High Court of any of those States.

That to clause (2) of article 285, the following proviso be added:

Provided that neither the tenure of office nor the conditions of service of a member of the Union or of any State Commission shall be varied to his disadvantage after his appointment.

That for clause (3) of article 285, the following clause be substituted:

(3) On ceasing to hold office the Chairman or any other member of the Union or of any State Commission shall not be eligible for any other appointment either under the Government of India or the Government of a State without the approval, in the case of an appointment in connection with the affairs of a State, of the Governor of the State, and in the case of any other appointment, of the President.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendments relating to the insertion of new clause (1-a) and also the addition of the new proviso to clause (2) of article 285.

ARTICLE 286

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari: That in clause (3) of article 286, for the word "President" the word "Parliament", for the word "Governor" the word "Legislature", for the words "make regulations specifying" the words "by law specify" and for the words "regulations so made" the words "such law"

be substituted respectively.

Note: This amendment seeks to replace the word "President" by "Parliament" and the word "Governor" by "Legislature of the State" in clause (3) of article 286, so that whenever it may become necessary to exclude any matter from the purview of the Public Service Commission, a law will have to be passed for the purpose. If these changes are given effect to, they would make the provision very rigid, and it is for the Constituent Assembly to decide if this amendment is to be accepted. If, however, this amendment is accepted, then it should be redrafted as follows:

In clause (3) of article 286, for the portion commencing with the words "The President as respects the All-India Services" and ending with the words "but, subject to regulations so made" the following be substituted:

Parliament as respects services and posts in connection with the affairs of the Union and the Legislature of the State as respects services and posts in connection with the affairs of a State, may make laws specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted, but, subject to laws so made.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the above redraft.

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari: That clause (4) of article 286 be deleted.

Note: This amendment involves a question of policy. If the amendment is accepted, then the following consequential amendment will be necessary:

In clause (3) of article 286, the words "and to the provisions of the next succeeding clause" be omitted.

Gopal Narain and Ram Chandra Gupta: That in clause (3) of article 286, the words "and to the provisions of the next succeeding clause" be deleted.

Note: This amendment is consequential on the amendment proposed by the sponsor of this amendment to delete clause (4) of article 286, and thus it involves a question of policy.

Gopal Narain and Ram Chandra Gupta: That for clause (4) of article 286 the following be substituted:

(4) Every Public Service Commission shall furnish an annual report on the business conducted during the year, and other affairs of the Commission, to the President or the Governor of the State, as the case may be, who shall cause it to be laid before Parliament in the case of the Union Commission and before the Legislature of the State in the case of the State Commission.

Note: This amendment seeks to delete clause (4) of article 286 and to insert a new clause (4) in its place with regard to submission of annual reports by the Public Service Commissions as to the work done by them and the laying of such reports before the appropriate Legislature. The

deletion of existing clause (4) of article 286 involves a question of policy.

As regards the new clause (4) of article 286 proposed by this amendment, it may be pointed out that an amendment for the insertion of a new article 288-A has been separately proposed to give effect to a similar suggestion made by the Chairman and members of the Federal Public Service Commission and the Chairmen of the Provincial Public Service Commissions. This amendment will not therefore be necessary.

Views of the Federal Public Service Commission and of the Chairmen of the Provincial Public Service Commissions: Article 286 of the Draft Constitution regarding the functions of the Public Service Commissions provides that regulations may be framed by the President or the Governor of a State, as the case may be, whereby it shall not be necessary for a Public Service Commission to be consulted on matters either generally or on any particular class of case, or in any particular circumstances. The conference agree that in the existing circumstances certain restrictions on the functions of the Commissions are necessary and inevitable, and further that these restrictions should be imposed by regulation and not by statute. But they recommend that the regulations in question should be framed by the President or the Governor in consultation with the Union or the State Commissions, as the case may be.

Note: If the suggestion of the Chairman and members of the Federal Public Service Commission and the Chairmen of the Provincial Public Service Commissions referred to above is accepted, then amendments proposed by the Drafting Committee below would be necessary.

Drafting Committee: (i) That in clause (3) of article 286, after the words "in connection with the affairs of the Union" the words "after consultation with the Union Commission" be inserted, (ii) That in clause (3) of article 286, after the words "in connection with the affairs of a State" the words "after consultation with the State Commission" be inserted.

ARTICLE 288

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari: That in article 288, the words "including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission" be deleted.

Note: The words "salaries, allowances and pensions payable to or in respect of the members or staff of the Commission" have been specifically mentioned in this article to remove any doubt as to whether the expenses of the Union or a State Public Service Commission mentioned in that article would include such salaries, allowances and pensions. To ensure the independence of the Public Service Commissions, it is necessary that the salaries, allowances and pensions payable to or in respect of the members

and the staff of the Commission should be charged on the revenues of India or, as the case may be, the State, as in the case of the Supreme Court, the High Courts, the Auditor-General of India and the Auditors in Chief for the States. This amendment cannot therefore be accepted.

NEW ARTICLE 288-A

Views of the Federal Public Service Commission and of the Chairmen of the Provincial Public Service Commissions: Article 286(3) of the Draft Constitution provides that, subject to regulations, the Union or the State Commission shall be consulted on certain matters described in clauses (a) to (e). A convention has been established at the Centre that in certain classes of cases referred to the Commission the recommendation made by that body shall be accepted save in exceptional circumstances. While the conference felt that it cannot be made obligatory on the Government to accept such advice, a provision might be made for a list of cases where the advice of the Commission has not been accepted to be placed before the Parliament or the appropriate Legislature. To this end, the conference recommended that on the analogy of article 127 and 211 provision should be made in the Constitution for the reports of the Public Service Commissions being made annually, and laid before the appropriate Legislature.

Note: If it is decided to accept the above suggestion of the Chairman and members of the Federal Public Service Commission and the Chairmen of the Provincial Public Service Commissions, then the proposed new article 288-A by the Drafting Committee below would be necessary.

Drafting Committee: That in Chapter II of Part XII, after article 288, the following article be added:

288-A. Reports of the Public Service Commissions: (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before Parliament.

(2) It shall be the duty of every State Commission to present annually to the Governor a report as to the work done by the Commission and on receipt of such report the Governor shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment.

17. *Minorities*

ARTICLE 292

Govind Das : (i) That article 292 be deleted and consequential changes be made in the numbering of the subsequent articles.

(ii) That for article 292 the following be substituted :

292. Seats shall be reserved in the House of the People for the Scheduled Tribes in every State for the time being specified in Part I of the First Schedule according to the scale prescribed in sub-clause (b) of clause (5) of article 67 of this Constitution.

Govind Das and Thakurdas Bhargava : That in article 292 after the words "Seats shall be reserved" the words "for ten years from the commencement of this Constitution" be inserted.

Govind Das and Thakurdas Bhargava : (i) That the following be added at the end of article 292 :

and in case the communities for whom the seats have been so reserved fail to return the full quota of membership the deficiency shall be made up by nomination by the President.

(ii) That the following provisos be added to article 292 :

Provided that members of the communities for whom seats are reserved under article 292 shall not be chosen from general constituencies and members of communities other than those for whom seats are reserved shall not be chosen from reserved constituencies :

Provided that no member of any community for whom seats are so reserved will be competent to stand for any seat other than those reserved for the community.

(iii) That article 292 be renumbered as clause (1) of article 292 and after the said clause as so renumbered the following be added as clause (2) :

(2) Such reserved seats shall be filled by those members of the communities concerned who are returned by general elections and the President shall nominate as many members from the community concerned as are required to make up the deficiency. The President shall on subsequent occasions of shortage similarly in the quota reserved for the community concerned make up the shortage by nomination.

Note : Article 292 follows the decisions of the Advisory Committee (with regard to the reservation of seats in the House of the People) as adopted by the Constituent Assembly during its August 1947 session. The provision that reservations shall remain in force for ten years has been included in article 305 of the Draft Constitution. It has also been decided by the Constituent Assembly that the members of minority communities having reserved seats shall have the right to contest unreserved seats as well. The total number of reservations under article 292 for the House of the People will work out to about 137. If power were given to the President

to nominate members of the minority communities so as to make up for any deficiency resulting from the general election, the number of nominations might be so large as seriously to interfere with the democratic character of the House. It might also result in the total number of members of the House of the People being increased to more than 500 and would thus contravene the provisions of sub-clause (a) of clause (5) of article 67 of the Draft Constitution. The Drafting Committee did not therefore accept these amendments.

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : (i) That in paragraph (a) of article 292, the words "the Muslim community and" be deleted. (ii) That in article 292, paragraph (c) be omitted.

Note : These amendments involve questions of policy.

Tajamul Husain : That article 292 be deleted; or, alternatively,

That in clause (a) of article 292 the words "the Muslim community and" be deleted.

Note : Article 292 follows the decision of the Advisory Committee (with regard to the reservation of seats in the House of the People) as adopted by the Constituent Assembly during its August 1947 session. This amendment which seeks to delete article 292 and the alternative amendment which seeks to delete the words "the Muslim community and" from clause (a) of article 292 thus both involve questions of policy.

Atul Chandra Gupta (Advocate, Calcutta High Court) has suggested that articles 292 to 298 should be deleted.

Note : These articles are based on the decisions already taken by the Constituent Assembly. The proposal to delete them involves a question of policy.

Drafting Committee : That article 292 be re-numbered as clause (1) of article 292 and

(a) in the said clause as so re-numbered the words "according to the scale prescribed in sub-clause (b) of clause (5) of article 67 of this Constitution." be omitted ;

(b) after the said clause as so re-numbered, the following new clause be added :

(2) The number of seats reserved in any State for any community under clause (1) of this article shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State in the House of the People as the population of the community in that State bears to the total population of that State.

Explanation : All the Scheduled Castes in a State shall be deemed to be a single community for the purposes of this clause and so also all the Scheduled Tribes in a State.

Note : The note under amendments to article 67 may be seen. In view of the amendments suggested in clause (5) of article 67 to make it clear that

the provisions with regard to the calculation of the number of representatives to be allotted to each constituency contained in sub-clause (b) of that clause and also the provisions of sub-clause (c) of that clause would not apply to constituencies having seats reserved for the purposes of article 292 of the Constitution, the proposed amendments would be necessary in article 292.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendments. The committee also decided that in sub-clause (b) of clause (1) of article 292 the words "(except the Scheduled Tribes in the tribal areas of Assam)" in brackets be inserted. A new clause "(d) the Scheduled Tribes in the autonomous districts of Assam" was added after clause (c).

ARTICLE 293

Govind Das : (i) That article 293 be omitted and consequential changes be made in the numbering of the subsequent articles.

(ii) That for article 293, the following be substituted :

293. (1) Notwithstanding anything contained in article 67 of this Constitution, the President may, if he is of opinion that the Muslim community, the Sikh community, or the Indian Christian community in the States of Madras and Bombay, or the Scheduled Castes, is not represented in the same proportion to the total number of seats in the Legislative Assembly as the population of the community in the State bears to the total population of the State, in the House of the People, nominate such number of members of the community concerned as would make up as nearly as may be the said proportion.

(2) The President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People.

Note : Article 293 follows the decisions of the Advisory Committee on the subject of minority rights as adopted by the Constituent Assembly during the August 1947 session. See remarks on amendments under article 292.

The Drafting Committee did not accept these amendments.

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in article 293, before the word "Anglo-Indian" the words "Indian Christian or" and after the words "not more than" the words "four members of the Indian Christian and", and before the word "community" in the last line, the word "Anglo-Indian" be inserted respectively.

Note : This amendment involves a question of policy. If this amendment is accepted, then it should be redrafted as follows :

In article 293, for the words "the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of the community" the words "the Indian Christian or

the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than four members of the Indian Christian community or, as the case may be, not more than two members of the Anglo-Indian community" be substituted.

Tajamul Husain : That article 293 be deleted.

Note : Article 293 follows the decision of the Advisory Committee as adopted by the Constituent Assembly during its August 1947 session. Accordingly, this amendment also involves a question of policy.

ARTICLE 294

Govind Das : (i) That article 294 be omitted and consequential changes be made in the numbering of the subsequent articles.

(ii) That for clause (1) of article 294 the following be substituted :

(1) Seats shall be reserved for the Scheduled Tribes (except the Scheduled Tribes in the autonomous districts of Assam) in the Legislative Assembly of every State for the time being specified in Part I of the First Schedule according to the scale prescribed in clause (3) of article 149 of this Constitution.

Thakurdas Bhargava and Govind Das : That in clause (1) of article 294, after the words "Seats shall be reserved" the words "for ten years from the commencement of this Constitution" be inserted.

Thakurdas Bhargava and Govind Das : The following proviso be added to clause (1) of article 294 :

Provided that members of communities for whom seats are reserved under article 294 shall not be chosen from general constituencies and members of communities other than those for whom seats are reserved shall not be chosen from reserved constituencies :

Provided that no member of any other communities for whom seats are so reserved will be competent to stand for any seat other than those reserved for the community.

Govind Das : That clause (3) of article 294 be omitted and the subsequent clauses be renumbered accordingly.

Thakurdas Bhargava and Govind Das : (i) That the following be added at the end of article 294 :

and in case the communities for whom the seats have been so reserved fail to return the full quota of membership the deficiency shall be made up by nomination by the Governor.

(ii) That to article 294, the following new clause be added :

(7) Such reserved seats shall be filled by those members of the communities concerned who are returned by general elections and the Governor shall nominate as many members from the community concerned as are required to make up the deficiency. The Governor shall on subsequent occasions of shortage similarly in the quota reserved for the community concerned make up the shortage by nomination.

Note : Article 294 follows the decisions of the Advisory Committee (with regard to the reservation of seats in the Legislatures of the States) as adopted by the Constituent Assembly during the August 1947 session. The provision that such reservation shall remain in force for ten years has been included in article 305 of the Draft Constitution. It has also been decided by the Constituent Assembly that the members of minority communities having reserved seats shall have the right to contest unreserved seats as well. The remarks on amendments under article 292 will apply to these amendments also *mutatis mutandis*.

The Drafting Committee did not accept any of these amendments.

H. J. Khandekar, Dharam Prakash, Yashwant Rai, Chandrika Ram, S. Nagappa, V. C. Kesava Rao, T. Channaya and Shrimati Dakshayani Velayudhan : That for paragraph (a) of clause (1) of article 294, the following be substituted :

(a) the Muslim community, the Scheduled Castes and the Scheduled Tribes (except the Scheduled Tribes in the autonomous districts of Assam) in Parts I, II and III of the First Schedule ; and

S. Nagappa : That in paragraph (a) of clause (1) and in clause (3) of article 294, for the words "specified in Part I" the words "specified in Parts I, II and III" be substituted.

H. J. Khandekar, Dharam Prakash, Yashwant Rai, Chandrika Ram, S. Nagappa, V. C. Kesava Rao, T. Channaya and Shrimati Dakshayani Velayudhan : That in clause (3) of article 294, for the words "Legislative Assembly" the words "Legislature and local bodies", and for the words "Part I" the words "Parts I, II and III" be substituted.

Note : These amendments are not very clear. Apparently the intention is that the reservation of seats for the Muslim community, the Scheduled Castes and the Scheduled Tribes provided for in sub-clause (a) of clause (1) of article 294 should be made applicable not only in the case of the Legislative Assemblies in States in Part I of the First Schedule but also in the case of local bodies in such States and the Legislative Assemblies and local bodies in States in Parts II and III of the First Schedule. As has already been pointed out, the provisions regarding reservations contained in article 294 follow the decisions of the Advisory Committee as adopted by the Constituent Assembly. The Special Committee also considered this question and was of the view that the provisions relating to reservation of seats to minorities should be made applicable to all elections to the Legislatures or in the case of Legislatures having two Houses, in the Lower Houses of the Legislatures of States including the States in Part III of the First Schedule and to give effect to the views of the Special Committee necessary amendments have been suggested in article 294 separately. The Scheduled Tribes have been defined in sub-clause (x) of clause (1) of article 303 in relation only to States in Part I of the First Schedule. Accordingly, the question of reservation of seats for Scheduled Tribes in States in Parts II and

III of the First Schedule will not arise. The amendments suggested to give effect to the views of the Special Committee will meet the point regarding the reservation of seats for the Muslim community and the Scheduled Castes in States in Part III of the First Schedule raised in this amendment. Necessary amendments have been also suggested in article 294 for reservation of seats for the Muslim community and the Scheduled Castes in the Legislative Assemblies of States in Part II of the First Schedule if the recommendations of the *ad hoc* Committee on the Chief Commissioners' Provinces regarding separate Legislatures for such States are accepted. The question of reservation of seats in local bodies should be left to be regulated by Acts of the appropriate Legislatures relating to such bodies. These amendments are not therefore necessary.

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : (i) That in paragraph (a) of clause (1) of article 294, the words "the Muslim community" be deleted. (ii) That in article 294, paragraph (b) of clause (1) be deleted.

Note : These two amendments involve questions of policy.

Tajamul Husain : That article 294 be deleted. Or, alternatively,

That in sub-clause (a) of clause (1) of article 294 the words "the Muslim community" be deleted.

Note : Article 294 follows the decision of the Advisory Committee (with regard to the reservation of seats in the Legislatures of the States) as adopted by the Constituent Assembly during the August 1947 session. Both the amendments which seek to delete article 294 and the alternative amendment which seeks to delete the words "the Muslim community" from sub-clause (a) of clause (1) of article 294 involve questions of policy.

Drafting Committee : (i) That for clause (1) of article 294 the following clause be substituted :

(1) Seats shall be reserved for—

(a) the Muslim community and the Scheduled Castes in the Legislature of every State for the time being specified in Part I or Part III of the First Schedule ;

(b) the Scheduled Tribes (except the Scheduled Tribes in the autonomous districts of Assam) in the Legislature of every State for the time being specified in Part I of the First Schedule ; and

(c) the Indian Christian community in the Legislatures of the States of Madras and Bombay.

Explanation : In this clause and in clause (3) of this article the expression "Legislature" means, where the Legislature is bicameral, the Lower House of the Legislature.

(ii) That for clause (3) of article 294, the following clause be substituted :

(3) The number of seats reserved for any community in the Legislature of any State under clause (1) of this article shall bear, as nearly as may be, the same proportion to the total number of seats in the Legislature

as the population of the community in the State bears to the total population of the State.

Explanation : All the Scheduled Castes in a State shall be deemed to be a single community for the purposes of this clause and so also all the Scheduled Tribes in a State.

Note : The Special Committee was of opinion that the provisions relating to reservation of seats for minorities should be made applicable to all elections to the Legislature or where there are two Houses of the Legislature to the Lower House of the Legislature in all States including the States in Part III of the First Schedule.

To give effect to the views of the Special Committee these amendments are suggested in article 294.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendments.

ARTICLE 295

Govind Das : (i) That article 295 be deleted, and consequential changes be made in the numbering of the subsequent articles.

(ii) That for article 295, the following be substituted :

295. (1) Notwithstanding anything contained in article 149 of this Constitution, the Governor of a State may, if he is of opinion that the Muslim community, the Indian Christian community in the Legislative Assemblies of the States of Madras and Bombay, the Sikh community in the State of East Punjab, and the Scheduled Castes, are not represented in the same proportion to the total number of seats in the Assembly as the population of the community in the States bears to the total population of the State, nominate such number of members of the community concerned as would make up as nearly as may be the said proportion.

Explanation : All the Scheduled Castes in a State shall be deemed to be a single community for the purposes of this clause.

(2) The Governor of Madras/Bombay may, if he is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly of the State, nominate such number of members of the community to the Legislative Assembly as he considers appropriate.

Note : Article 295 follows the decisions of the Advisory Committee on the subject of minority rights as adopted by the Constituent Assembly during the August 1947 session. See remarks on amendments under article 294. The Drafting Committee did not accept any of these amendments.

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in article 295, before the word "Anglo-Indian" the words "Indian Christian or the" be inserted.

Note : This amendment involves a question of policy.

Tajamul Husain : That article 295 be deleted.

Note : Article 295 follows the decision of the Advisory Committee as adopted by the Constituent Assembly during the August 1947 session. Accordingly this amendment which seeks to delete article 295 involves a question of policy.

ARTICLE 296

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That for article 296, the following be substituted :

296. Subject to the provisions of the next succeeding article, only individual merit and qualifications shall be taken into consideration in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Parts I and II of the First Schedule :

Provided, however, that the claims of Scheduled Castes and Scheduled Tribes and educationally backward sections of the population for a fair share of representation shall be taken into consideration consistently with the maintenance of efficiency of administration.

Note : The effect of this amendment will be to exclude the Muslims and the Indian Christian community from the protection afforded to the minorities by article 296. The words "a fair share of representation" in the redraft of this article suggested by this amendment are vague. Article 296 is based on the recommendation of the Advisory Committee on Minority Rights which has been adopted by the Constituent Assembly. This amendment involves a departure from the decision of the Constituent Assembly and should therefore be left to the Constituent Assembly for final decision.

S. Nagappa, H. J. Khandekar, Dharam Prakash, Yashwant Rai, Chandrika Ram, V. C. Kesava Rao, T. Channaya and Shrimati Dakshayani Velayudhan : That in article 296, for the words "Part I" the words "Parts I, II and III" be substituted and the following be added at the end :

but in the case of Scheduled Castes there shall be reservation in services and posts on their population basis with a requisite minimum qualification for the service or post.

Note : The amendment seeks (a) to extend the application of article 296 to appointments to services and posts in connection with the affairs of any State specified in Parts II and III of the First Schedule ; and (b) to provide for special reservation for members of the Scheduled Castes possessing the requisite minimum qualifications in respect of services and posts in proportion to their population.

As regards (a), it may be pointed out that the Advisory Committee was also of opinion that the provisions relating to the claims of minorities to public services and posts should be made applicable to all States including

States in Part III of the First Schedule and to give effect to the views of the Special Committee an amendment has been suggested to omit the words "for the time being specified in Part I of the First Schedule" from article 296 and the first part of this amendment would not therefore be necessary.

As regards (b), it may be pointed out that the Advisory Committee on Minority Rights has not recommended any special provision to be included in the Constitution for reservation in respect of services and posts for the Scheduled Castes and so the second part of this amendment should be left to the Constituent Assembly for final decision.

Tajamul Husain : That article 296 be deleted.

Note : Article 296 is based on the recommendation of the Advisory Committee on Minority Rights which has been adopted by the Constituent Assembly. This amendment involves a departure from the decision already taken by the Constituent Assembly and should therefore be left to the Constituent Assembly for final decision.

Drafting Committee : That in article 296 the words "for the time being specified in Part I of the First Schedule" be omitted.

Note : The Special Committee was of opinion that the provisions relating to the claims of minorities to public services and posts should be made applicable to all States including the States in Part III of the First Schedule. Hence the proposed amendment.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

ARTICLES 297 AND 298

Tajamul Husain : That articles 297 and 298 be deleted.

Note : Articles 297 and 298 are based on the recommendations of the Advisory Committee on the subject of minority rights as adopted by the Constituent Assembly during the August 1947 session. This amendment which seeks to delete articles 297 and 298 thus involves questions of policy.

ARTICLE 299

Tajamul Husain : That article 299 be deleted.

Note : Article 299 is based on the recommendation of the Advisory Committee on Minority Rights as adopted by the Constituent Assembly during the August 1947 session. This amendment which seeks to delete article 299 involves a departure from the decision of the Constituent Assembly and should therefore be left to the Constituent Assembly for final decision.

Decision of the Drafting Committee, October, 1948 : The Committee decided that after the words "laid before" in clause (2) of article 299 the words "each House of" be inserted.

ARTICLE 300

S. Nagappa : That in clauses (1) and (2) of article 300, after the words "welfare of the" the words "Scheduled Castes and" be inserted.

H. J. Khandekar, Dharam Prakash, Yashwant Rai, Chandrika Ram, S. Nagappa, V. C. Kesava Rao, T. Channaya and Shrimati Dakshayani Velayudhan : (i) That in clause (1) of article 300 after the words "the welfare of" the words "the Scheduled Castes and" be inserted and for the words "Part I" the words "Parts I, II and III" be substituted.

(ii) That in clause (2) of article 300 after the words "welfare of" the words "the Scheduled Castes and" be inserted.

Note : These amendments involve questions of policy. Article 300 follows the decision of the Advisory Committee on Minority Rights as adopted by the Constituent Assembly.

Tajamul Husain : That article 300 be deleted.

Note : Article 300 follows the recommendation of the Sub-Committee on the Excluded and Partially Excluded Areas of Provinces other than Assam. This amendment which seeks to delete article 300 thus involves a question of policy.

ARTICLE 301

H. J. Khandekar, Dharam Prakash, Chandrika Ram, Yashwant Rai, S. Nagappa, V. C. Kesava Rao, T. Channaya and Shrimati Dakshayani Velayudhan : That in clause (1) of article 301 for the words "educationally backward classes" the words "educationally and economically backward particularly Scheduled Castes classes" be substituted.

Note : Article 301, as it stands at present, follows the language of the decision of the Advisory Committee on Minority Rights as adopted by the Constituent Assembly.

18. *Emergency Provisions*

ARTICLE 188

Tajamul Husain : That in clause (1) of article 188 after the words "he may" the words "in consultation with the Council of Ministers" be inserted.

Note : Article 188 provides power for enabling the Governor to suspend the Constitution in cases of grave emergencies. If the Governor in the exercise of his functions under article 188(1) is required to act in consultation with his Council of Ministers in the matter of suspension of the operation of the Constitution under that article, then his Ministers will hardly advise him to take such action as will put an end to their administration. Accordingly it would not be proper to insert the words

"in consultation with the Council of Ministers" after the words "he may" in clause (1) of article 188 as proposed by this amendment.

Jaya Prakash Narayan: The following should be substituted for article 188:

188. (a) The States shall be autonomous in their administration.

(b) The executive authority of the Federation may help with armed forces the Government of a State at the request of the Government of the State in the restoration of public order.

(c) If public safety and order be seriously disturbed in any part of the Republic and the Government of the State concerned fails to restore public order, the President of the Federation may restore public safety and order with the help of armed forces. Under such circumstances all authorities of the State concerned shall assist and obey the instructions of the executive authority of the Federation and its duly authorized agents in the restoration of public safety and order.

(d) If public safety and order be seriously disturbed the executive authority of the Federation may also suspend the provisions of the Constitution concerning freedom of speech, association and assembly and inviolability of person, home and correspondence in the manner and to the extent determined by the Federal law and enforce such of the provisions as are determined by the Federal law for such occasion.

(e) The executive authority must immediately communicate to the Federal Legislature all measures taken under this article of the Constitution.

Note: Article 188 follows the recommendation of the Provincial Constitution Committee as adopted by the Constituent Assembly. Clause (a) of the new article 188 proposed by this amendment is hardly necessary in view of the provisions already made with regard to administration of the States in the Draft Constitution.

The use of naval, military or air forces in aid of the civil power for the restoration of public order is exclusively within the Central field and not within the jurisdiction of the State (*vide* item 1 of the Union List and item 1 of the State List in the Seventh Schedule to the Draft Constitution). The executive power of the Union therefore extends exclusively to this matter [*vide* article 60(1)(a) of the Draft Constitution]. Clause (b) of the new article 188 proposed by this amendment is therefore hardly necessary.

Even if the existing article 188 be omitted, then in case of domestic violence in any State threatening the security of India the President may take action under article 275 and issue a proclamation of emergency under that article. The issue of such proclamation will enable the President to take the action referred to in clause (c) of the new article 188 proposed by this amendment. Article 279 also confers powers similar to those referred to in clause (d) of that new article. Article 234(1) casts on the States the duty not to impede or prejudice the exercise of the executive power of

the Union and the executive power of the Union extends under that article to the giving of directions to any State for that purpose. Further, all proclamations of emergency issued under article 275 are required to be laid before each House of Parliament under sub-clause (b) of clause (2) of that article.

The new article 188 proposed by this amendment will thus be hardly necessary even if the existing article 188 be omitted.

Drafting Committee : That Chapter V of Part VI (article 188—provisions in case of grave emergencies) be omitted.

Note : The Special Committee was of opinion that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution. This will mean the omission of the provisions contained in article 188, as the functions of the Governor under that article can only be exercised by him in his discretion, for if the Governor is to act on advice in the matter of suspension of the operation of the Constitution under the said article, the Ministers will not advise him to take action which will inevitably put an end to their administration. To give effect to the views of the Special Committee, Chapter V of Part VI containing this article should therefore be omitted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee did not at this stage sponsor the above amendment. The committee decided that the word "proclamation" be substituted by the words 'public notification' in article 188.

ARTICLES 227 AND 275 TO 280

Jaya Prakash Narayan : The following should be substituted for article 227 and articles 275 to 280 :

275. (a) The Federal Government shall be responsible for the protection of every State against external invasion and violence.

(b) It shall be the duty of the Governments of States to assist the Federal Government in the mobilization of man-power and resources of the country for the purposes of defence and to maintain communications needed for the purposes of defence.

(c) Whenever a grave emergency exists, whereby the security of India is threatened by war, the Federal Legislature shall have the concurrent power to make laws for the State so affected or a part thereof even with respect to matters assigned to the exclusive charge of the State. Under such circumstances it shall be the duty of all authorities and officials of States concerned to co-operate with, and obey instructions of the Federal authority, issued for the purposes of the defence of the Republic or a part thereof.

The President of the Federation may also take over the charge of the administration of such parts of the States as are required for the purposes of the defence of the Republic.

Note: This amendment seeks to omit articles 227 and 275 to 280 from the Draft Constitution and to insert a new article in their places.

Clause (a) of the new article proposed seeks to guarantee the protection of every State against external invasion and violence. The Drafting Committee has already considered this point and has recommended the insertion of the following new article after article 277:

277-A. It shall be the duty of the Union to protect every State against external aggression and domestic violence.

Clause (b) of the new article proposed is hardly necessary as the executive power of the Union extends exclusively to all matters regarding the mobilization of man-power and resources of the country for the purposes of defence and the executive power to maintain communications for the purposes of defence also vests in the Union (*vide* entries 1 and 4 of the Union List in the Seventh Schedule and article 60(1) of the Draft Constitution), and the power to issue directions to the States with respect to these matters also vests in the Union (*vide* article 234).

Clause (c) of the new article proposed lays down in a condensed form the provisions contained in articles 227, 228 and 276.

The provisions that the President of the Federation may take over the charge of the administration of such parts of the States as are required for the purposes of defence of the Republic will necessitate the suspension of the Constitution with regard to such parts of those States, and whether the President should be armed during a period of emergency with powers to suspend the Constitution with regard to any State is a question involving policy. The power to make laws for the State or any part thereof with respect to matters assigned to the exclusive charge of the State and the exercise of the executive power with respect to such matters and in addition to power to issue directions to the States and to impose duties and to confer powers on the Union and its officers and authorities as provided for in articles 227, 228 and 276 might be considered to be sufficient during such emergencies and the suspension of the Constitution with regard to any State might not be considered necessary.

The proposed amendment is therefore hardly necessary.

ARTICLE 276

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari: That in paragraph (b) of article 276, after the words "authorities of the Government of India" the words "or upon the Government or officers and authorities of any State" be inserted.

Note: Clause (b) of article 276 is mainly intended to give power to Parliament to make laws with respect to any matter in the State List or in the Concurrent List conferring powers and imposing duties or authorizing the conferring of powers and the imposition of duties upon the Government

of India or officers and authorities of that Government as respects that matter, for the executive power of the Union does not ordinarily extend to such matters. It is not necessary to provide for the conferment of powers and the imposition of duties on the Government or officers and authorities of States as respects any matter in the State List or in the Concurrent List as the executive power of the States extends to such matters. It is also not necessary to provide for the conferment of powers and the imposition of duties upon the Government or officers and authorities of any State with respect to any matter in the Union List in view of clause (2) of article 235. This amendment is not therefore necessary. But in order to make the meaning of the article clearer, the following amendments may be made:

(i) In article 276, the words "notwithstanding anything contained in this Constitution" be omitted.

(ii) In clause (b) of article 276, the words "notwithstanding that it is one which is not enumerated in the Union List" be added at the end.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendments. The committee decided to add the words "notwithstanding anything contained in this Constitution" at the beginning of clause (a) of article 276.

ARTICLE 277

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari: That in article 277, for the word "President" the word "Parliament" and for the words "by order, direct" the words "by resolution passed by both Houses, decide" be substituted.

R. K. Sidhva: That the following proviso be added to article 277:

Provided that the President shall after promulgating such a proclamation of emergency, summon a session of Parliament within one month from the date of such promulgation and obtain the sanction from Parliament of the proposed policy to be adopted during the emergency period.

Note: Article 277 is based on the recommendation of the Expert Committee on the Financial Provisions of the Constitution. It is for the Constituent Assembly to decide if this amendment should be accepted. If this amendment is to be accepted, then it should be revised as follows:

To article 277 the following proviso be added:

Provided that no such order shall be made unless the provisions of the order have been previously approved by resolutions of both Houses of Parliament.

NEW ARTICLE 277-A

Comments by V. T. Krishnamachari, B. H. Zaidi, Sardar Singhji of Khatri and Sardar Jaidev Singh: There should be a specific clause in the

Constitution on the following lines :

It shall be the duty of the Union to protect every State against external aggression and, upon a request from the executive Government of a State, to protect or restore the duly constituted authorities of that State in the event of domestic violence or insurrection.

Note : The Drafting Committee agreed that there should be a provision on these lines in the Constitution, but that it should be redrafted as in the proposed amendment below.

Drafting Committee : That after article 277 the following new article be inserted :

277-A. Duty of the Union to protect States against external aggression and domestic violence : It shall be the duty of the Union to protect every State against external aggression and domestic violence.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

ARTICLE 278

K. Santhanam, M. Ananthasayanam Ayyangar and Shrimati G. Durgabai :

(i) That in sub-clause (b) of clause (1) of article 278, for the words "only by Parliament" the words "only by himself in the form of Emergency Ordinances" be substituted.

(ii) That clause (4) of article 278 be deleted.

(iii) That in clause (5) of article 278 for the words "law made by Parliament which Parliament would not but for the issue of a proclamation under this article have been competent to make shall to the extent of the incompetency" the words "Emergency Ordinance issued by the President shall" be substituted.

Note : These amendments are not necessary. Suspension of responsible government in a particular State does not necessitate any suspension of responsible government or Parliamentary control at the Centre. There is therefore no need to invest the President with a power of making Ordinances independent and exclusive of Parliament itself. His power to make Ordinances when Parliament is not in session is saved by article 278(4)(b). The intention of the article is that, as responsible government has broken down in the State, it should be replaced by responsible government from the Centre in respect of matters falling normally in the State sphere.

It may however be pointed out that if the suggestion of the Special Committee that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution is accepted, then it would be necessary to omit not only article 188 but also article 278.

R. K. Sidhva : That in the proviso to clause (3) of article 278, for the words "three years" the words "one year" be substituted.

Note: This amendment involves a question of policy. If it is decided to accept this amendment, then it should be redrafted as follows:

For the proviso to clause (3) of article 278, the following be substituted:

Provided that if a resolution approving the continuance in force of such a proclamation is passed by both Houses of Parliament, the proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under sub-clause (b) of this clause it would otherwise have ceased to operate.

The last paragraph of the remarks on the amendments proposed by K. Santhanam, Ananthasayanam Ayyangar and Shrimati Durgabai would also apply to this amendment.

A. B. Rudra (Principal, Jaipuria College, Calcutta) has suggested that in clause (1) of article 278, after the words "satisfied that" the words "a grave emergency has arisen which threatens the peace and tranquillity of the State and that" should be inserted to make it clear that action may be taken by the President under the clause only in case of grave emergencies threatening the peace and tranquillity of the State and not merely for reasons of a ministerial crisis as a result of maladministration.

Note: Action by the President under clause (1) of article 278 in respect of a State will follow action taken by the Governor of the State under article 188 and this latter action could be taken by the Governor only when he is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the State. Therefore it is hardly necessary to repeat the said condition in clause (1) of article 278. However, if it is intended to accept this suggestion, then the following amendment would be necessary in clause (1) of article 278:

In clause (1) of article 278, for the words "a situation has arisen in which" the words "a grave emergency has arisen which threatens the peace and tranquillity of the State and that" be substituted.

Drafting Committee: That article 278 be omitted.

Note: The remarks on the Drafting Committee's amendment under article 188 may be seen. If article 188 be omitted, then this article cannot be retained.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided that for the words "on receipt of a proclamation" the words "on receipt of a notification" be substituted in article 278.

ARTICLE 280

R. K. Sidhva: That article 280 be deleted.

Note: This article mainly embodies the decision already taken by the Constituent Assembly. A Proclamation of Emergency can be issued only when the President is satisfied that a grave emergency has arisen whereby the security of India is threatened, whether by war or domestic violence.

During such a period of emergency, when the entire existence of the State is at stake, it may be necessary to curtail rights which are enjoyed in normal times; cf. Article 40(4)^{3°} of the Irish Constitution. See also Article 1, section 9(2) of the U.S.A. Constitution, which runs: "The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion, the public safety may require it."

The Drafting Committee has, however, recommended that the period of suspension in this article should be restricted to the period during which the Proclamation of Emergency is in operation.

Banwari Lall Chaturvedi has suggested a series of amendments which are mostly of a drafting nature. The only change of substance which is acceptable is the one relating to article 280, viz., that the period, during which the fundamental rights guaranteed by article 25 should remain suspended, should be the period during which the proclamation is in operation.

Note: This amendment has already been accepted by the Drafting Committee. See Drafting Committee's amendment and note thereon.

Note by Constitutional Adviser: The rights guaranteed by article 25 referred to in article 280 are the rights to move the Supreme Court by appropriate proceedings or any other court empowered under clause (3) of article 25 for the enforcement of the rights conferred by Part III of the Constitution. It appears however that under article 202 the High Court may be also moved for the enforcement of any of the rights conferred by Part III of the Constitution and this right to move the High Court is not taken away by article 280. Apparently the intention is that the right to move the Supreme Court or the High Court or any other court for the enforcement of any of the rights conferred by Part III of the Constitution shall remain suspended during the period of emergency. The following amendment is accordingly suggested to make the intention clearer:

In article 280, for the words "rights guaranteed by article 25 of this Constitution" the words "right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any such right so conferred" be substituted.

Drafting Committee: That in article 280 for the words "a period of six months after the proclamation has ceased to be in operation" the words "the period during which the proclamation is in operation" be substituted.

Note: This amendment gives effect to a recommendation of the Drafting Committee.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the amendment proposed by it as well as the amendment suggested by the Constitutional Adviser. Article 280 as

amended ran as follows :

280. Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the proclamation is in operation or for such shorter period as may be specified in the order.

19. *Amendment of the Constitution*

ARTICLE 304

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That for sub-clause (c) of the proviso to clause (1) of article 304, the following be substituted :

“the constitution or powers of the Supreme Court or the High Courts.”

Note : This amendment seeks to provide that ratification by the Legislatures of the States will be also necessary in the case of an amendment of the Constitution which makes any change in the constitution or powers of the Supreme Court or the High Courts. Article 304 as it stands requires such ratification only in the case of an amendment which changes the powers of the Supreme Court.

There is no objection to the amendment provided its effect is clearly understood : for example, under article 201, Parliament can make laws regulating the jurisdiction of any High Court in regard to matters in the Union List. If, in the exercise of this power, Parliament makes such a law, it will not be *amending* the Constitution but merely exercising powers given by the Constitution. Accordingly, the operation of article 304 of the Constitution will not be attracted and no ratification by the State Legislatures will be necessary. If this is clearly understood, the amendment may be accepted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

K. Santhanam, M. Ananthasayanam Ayyangar, T. T. Krishnamachari and Shrimati G. Durgabai : That in the proviso to clause (1) of article 304 the following new sub-clause be added :

(d) any provisions of Part III, Part VI, Part IX or Part XVI.

Note : This amendment involves a question of policy. If this amendment is accepted, it should be redrafted as follows :

(1) In sub-clause (b) of the proviso to clause (1) of article 304, the word “or” be omitted.

(2) At the end of sub-clause (c) of the proviso to clause (1) of article 304, the word “or” be inserted.

(3) After sub-clause (c) of the proviso to clause (1) of article 304, the

following clause be inserted :

(d) any of the provisions of Part III, Part VI, Part IX, Part X or Part XVI of this Constitution.

It may, however, be pointed out that Part VI of the Constitution would include also the provisions with respect to High Courts. If this amendment is accepted, the reference to High Courts sought to be included in sub-clause (c) of the proviso to clause (1) of article 304 above should be omitted.

R. R. Diwakar and S. V. Krishnamoorthy Rao : That in the proviso to clause (1) of article 304, for the words "Part I of the First Schedule and the Legislatures of not less than one-third of the States for the time being specified in Part III of that Schedule" the words "Parts I and III of the First Schedule" be substituted and the following be inserted as a new para :

(d) in any of the provisions contained in Part III.

Note : This amendment involves questions of policy.

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in clause (2) of article 304, after the words "Houses of the Legislature" the words "or the powers of the Governor to act in his discretion" be inserted.

Note : This amendment is hardly necessary in view of the suggestion of the Special Committee that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution. If, however, this amendment is accepted, then it should be redrafted as follows :

In clause (2) of article 304, before the words "the number of Houses of the Legislature" the words "the powers of the Governor to act in his discretion or" be inserted.

Tajamul Husain : That in clause (1) of article 304 the words "by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting" be deleted.

Note : This amendment seeks to make the process of amending the Constitution easier by providing for the bare majority instead of a special majority mentioned in clause (1) of article 304 for the passing of Bills relating to the amendment of the Constitution. This amendment, if accepted, would make the procedure for the amendment of the Constitution in the Union Parliament the same as the procedure for ordinary law making. There is no doubt a distinct advantage in adopting this easy process of amending the Constitution for a limited period after the commencement of the Constitution, say, within the first five years, for various problems may arise during the initial years, requiring frequent amendments of the Constitution. A new clause has accordingly been suggested for insertion in article 304 separately to provide for this easy process of amending the Constitution during the period of five years after the commencement of the Constitution. But the amendment of the Constitution can hardly be permitted by the ordinary process of law making for all time to come. This amendment

cannot therefore be accepted.

Tajamul Husain : That the proviso to clause (1) of article 304 be deleted.

Note : This amendment seeks to do away with the provisions relating to special ratification by the Legislatures of the States in case of a certain class of amendments to the Constitution and thus involves a question of policy. Ratification by the Legislatures of the States has been provided for in the case of amendment of the more important provisions of the Constitution in which the States are vitally interested and we can hard'y omit totally the provisions relating to such ratification.

The Editor of the Indian Law Review and some other members of the Calcutta Bar have expressed the view that a written constitution should have the rigidity necessary for its stability and effectiveness and also that there should be only a single procedure for amendment of the Constitution in all possible cases and have accordingly suggested that article 304 should be redrafted as follows :

304. An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the total membership of both Houses, and ratified by the Legislatures of the majority of the total number of States, it should be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

Note : This amendment seeks to make the provisions for amendment of the Constitution more rigid and thus involves a question of policy. If this amendment is given effect to, then it will be necessary to have a Bill for the amendment of the Constitution passed not only by a majority of the total membership of each House but also by a majority of not less than two-thirds of the total membership of both Houses and it will also require ratification by the Legislatures of a majority of the total number of States in each case.

It may be necessary to make the provision for the amendment of the Constitution rigid in the case of the more important provisions in the Constitution but it is hardly necessary to apply the same stringent method to the amendment of each and every provision of the Constitution. The Drafting Committee was of the view that a limited constituent power for the amendment of the Constitution in respect of certain defined matters should be also given to the State Legislatures. The redraft proposed can therefore be hardly accepted.

Jaya Prakash Narayan : The following should be substituted for article 304 :

304. This Constitution of the Republic of India may be amended by a law of the Federal Legislature adopted by a majority of not less than

two-thirds of the votes cast in two different sessions at the interval of at least three months:

Provided that the provisions of this Constitution to the extent they relate to the Constitution of the States may be amended by a Federal law passed by a majority of the total membership of the Federal Legislature in case the amendment concerned is desired by the Legislatures of the States concerned with two-thirds majority of votes cast.

Note: This amendment involves a question of policy. The provisions with regard to the amendment of the Constitution will become very rigid if it is provided that the amendment is to be adopted in two different sessions of the Federal Legislature at the interval of at least three months.

Comments of Alladi Krishnaswami Ayyar: The idea underlying clause (2) is to invest a State or Province with a limited power of constitutional amendment. One point is to be made clear: whether that power is to be exclusive or to be shared by the general power under article 304(1). If the intention is that it should be a concurrent power then it must be brought out. Any amendment is subject to the overriding power under article 304(1).

Drafting Committee: That in clause (2) of article 304—(i) the words “the method of choosing a Governor or” be omitted; (ii) after the word “may” the word “also” be inserted.

Note: The Drafting Committee was of the view that it should be made clear that the power to amend the Constitution referred to in clause (2) of article 304 was a concurrent power and might be exercised either under clause (1) of that article or under clause (2) thereof. Accordingly, the committee recommended that in clause (2) of article 304 after the word “may” the word “also” be inserted.

The Special Committee agreed to the insertion of a provision in article 304 giving a limited constituent power to the State Legislature in respect of certain defined matters and to the amendment recommended by the Drafting Committee in that article, but was of opinion that the reference to the method of choosing the Governor should be omitted from clause (2) of article 304 in view of the suggestion of the Special Committee that the Governor should be appointed directly by the President.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the second amendment.

Drafting Committee: That after clause (2) of article 304 and before the Explanation, the following new clause be inserted:

(3) Notwithstanding anything contained in clauses (1) and (2) of this article, any of the provisions of this Constitution except the provisions of this article and of article 305 may be amended by Parliament by law, whether by way of variation, addition or repeal, within a period of five years after the commencement of this Constitution.

Note: The process of amending the Constitution during the first few years should be made easier than is provided for in this article. In the

first place, to mention only one example, the pattern of the Indian States is undergoing rapid change, and one cannot say with confidence that the Constitution will not have to be continually altered at least during the initial years to fit the constantly changing pattern. Other problems too may arise requiring frequent amendment of the Constitution. The Constitution should not therefore be too rigid during the first few years. Secondly, we have to remember that the present Constituent Assembly is not based on adult suffrage, the members having been elected by the various Legislatures which, in their turn, were elected on a very restricted franchise. The Parliament of the new Union of India, on the other hand, will be based on adult franchise. If a Constituent Assembly based on a restricted franchise can by a simple majority frame the original Constitution, it is illogical to lay down that the Constitution so framed shall not be amended by a Parliament based on adult franchise except by a specially difficult process involving special majorities and in some cases special ratifications. Thirdly, it may be mentioned that Mr. De Valera attached very great importance to a provision in the Irish Constitution which permitted amendment by the ordinary process of law making during the first few years after its commencement.

ARTICLE 305

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari: That in article 305, the words "the Muslims", "or the Indian Christians" and "unless continued in operation by an amendment of the Constitution" be deleted.

Note: This amendment also involves a question of policy. If this amendment is accepted, then it should be redrafted as follows :

- (1) In article 305, for the words "the Muslims, the Scheduled Castes, the Scheduled Tribes or the Indian Christians" the words "the Scheduled Castes or the Scheduled Tribes" be substituted.
- (2) In article 305, the words "unless continued in operation by an amendment of the Constitution" be omitted.

S. Nagappa: That in article 305, for the words "for the time being specified in part I" the words "for the time being specified in Parts I, II and III" and for the words "amended during a period of ten years" the words "amended during a period of fifteen years" be substituted.

Note: The Special Committee was of opinion that the provisions relating to reservation of seats for minorities should be made applicable to all elections to the Legislatures, or, in the case of Legislatures having two Houses, to the Lower Houses of the Legislatures, of all States including the States in Part III of the First Schedule. Accordingly, the first part of this amendment may be accepted, but it should be redrafted as follows :

In article 305, the words "for the time being specified in Part I of the

First Schedule" be omitted.

The second part of this amendment which seeks to extend the period for which the reservation shall remain in force from ten years to fifteen years involves a question of policy.

H. J. Khandekar, Yashwant Rai, Chandrika Ram, S. Nagappa, V. C. Kesava Rao, Dharam Prakash, T. Channaya and Shrimati Dakshayani Velayudhan : That in article 305 for the words "Part I" the words "Parts I, II and III" and for the words "ten years" the words "fifteen years" be substituted respectively.

Note : This amendment is the same as amendment above.

P. M. Velayudapani : That in article 305 for the words "ten years" the words "fifteen years" be substituted and the words "and shall cease to have effect on the expiration of that period unless continued in operation by an amendment of the Constitution" be deleted.

Note : Article 305 follows the decision of the Advisory Committee on Minority Rights as adopted by the Constituent Assembly. Both the Drafting Committee and the Special Committee have considered this amendment and have expressed the view that the amendment proposed involves a question of policy the decision of which should be left to the Constituent Assembly.

Tajamul Husain : That article 305 be deleted.

Note : This amendment involves a question of policy.

Drafting Committee : That in article 305, the words "for the time being specified in Part I of the First Schedule" be omitted.

Note : The Special Committee was of opinion that the provisions relating to reservation of seats for minorities should be made applicable to all elections to the Legislatures or where there are two Houses of the Legislatures, to the Lower Houses of the Legislatures of all States including the States in Part III of the First Schedule. The proposed amendment gives effect to this suggestion.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

20. Temporary and Transitional Provisions

ARTICLE 306

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in article 306, paragraph (a) be omitted.

Note : The Drafting Committee has explained the reasons for the insertion of article 306 including clause (a) thereof in the footnote to article 306 and also in paragraph 14 of the letter of the Chairman of the Drafting Committee to the President of the Constituent Assembly. It should be left to the Constituent Assembly to decide if clause (a) should be omitted from article 306.

If clause (a) is omitted, then the following consequential amendments would be necessary in article 306 :

(1) Clause (b) and clause (c) should be renumbered as clause (a) and clause (b) respectively.

(2) In clause (b) as so renumbered, for the words, brackets and letters "clauses (a) and (b)" the word, brackets and letter "clause (a)" be substituted.

The proviso to article 244 will then also have to be omitted.

The Ministry of Industry and Supply suggested that in clause (a) of article 306, the words "spare parts of mechanically propelled vehicles" should be deleted, as there is at present no control on these goods and it seems improbable that the need for control of these goods by the Centre will arise again.

Note: We may accept this suggestion. The following amendment would be necessary :

In clause (a) of article 306, the words "spare parts of mechanically propelled vehicles" be omitted.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor the above redraft.

Drafting Committee: That in clause (c) of article 306, the words "inquiries and statistics for the purposes of any of those matters" be omitted.

Note: This is a consequential amendment in view of the recommendation of the Drafting Committee that entry 64 relating to inquiries and statistics for the purposes of any of the matters in the State List should be omitted from List II (State List) and entry 36 in List III (Concurrent List) should be modified so as to cover inquiries and statistics not only of the matters specified in List III but also of the matters specified in List II.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

ARTICLE 307

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari: That in article 307 in Explanation II, for the word "has" the word "had" be substituted, and after the words "to have" the word "such" be inserted.

Note: The amendment may be accepted.

Drafting Committee: (i) That in Explanation I to article 307, the words "but shall not include an Ordinance promulgated under section 88 of the Government of India Act, 1935" be added at the end. (ii) That for Explanation III to article 307, the following be substituted:

Explanation III: Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration, or the date on which it would have expired if this Constitution had not come into force.

Note : Doubts may be entertained as to whether the expression "temporary Act" in Explanation III to article 307 would include regulations made under section 92 or section 96 of the Government of India Act, 1935, or Ordinances promulgated by the Governor-General under section 42 of that Act.

Further, the expression "law in force" will include an Ordinance promulgated by the Governor under section 88 of the Government of India Act, 1935. Such Ordinances are promulgated when the Legislature of the Province is not in session and cease to operate at the expiration of six weeks from the re-assembly of the Legislature. But if they are kept alive under article 307(1) until they are repealed by a competent Legislature or other competent authority, their lives will be prolonged beyond the time contemplated in section 88 of the Government of India Act, 1935. Explanation III to article 307 will not apply to such Ordinances. The best course would therefore be not to continue in force any such Ordinance after the commencement of the Constitution. If the Government of the State concerned consider that the provisions of such an Ordinance should be continued in operation after the commencement of the Constitution, then the proper course would be for the Governor of the State to promulgate a fresh Ordinance under article 187 of the Constitution. Hence the proposed amendments.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the two amendments as well as the amendment above suggested by K. Santhanam and others.

ARTICLE 310

Comments of the Calcutta High Court : It seems to their Lordships that non-citizens of India who are at present judges of High Courts will become judges of the High Courts of the States under the provision in article 310, in spite of the provision in article 193(2) that a person shall not be qualified for appointment as a judge unless he is a citizen of India : but this is not altogether free from doubt. Their Lordships consider that the position should be made clear, and that provision should be made for compensating judges who are not citizens of India, if they are not entitled to become judges under this provision, or if they elect not to do so.

Note : If the doubt is to be removed we must insert at the beginning of article 310 the words "Notwithstanding anything contained in clause (2) of article 193 of this Constitution".

Both the Drafting Committee and the Special Committee have agreed to the amendment proposed.

Drafting Committee : That the words "Notwithstanding anything contained in clause (2) of article 193 of this Constitution" be inserted at the beginning of article 310.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to sponsor its amendment.

ARTICLE 311

Note: In clause (3) of article 311, the expression "provisional President" has been used. It is hardly necessary to use the word "provisional" as the words which follow make it clear that the President to be elected by the Constituent Assembly shall remain in office only until a President has been elected in accordance with the provisions contained in Chapter I of Part V of the Constitution and has entered upon his office. The use of two different nomenclatures, one 'provisional President' and the other 'President', may give rise to confusion for it may be contended that the expression "the President" used in clause (1) of article 313 refers not to the 'provisional President' but to the 'President' to be elected in accordance with the provisions contained in Chapter I of Part V of the Constitution. It is therefore better to omit the word "Provisional". The following amendment is accordingly suggested :

In clause (3) of article 311 the word "provisional" be omitted.

The following consequential amendment will be also necessary :

In clause (4) of article 311, for the words "provisional President under this Constitution" the words "President elected by the Constituent Assembly of the Dominion of India under clause (3) of this article" be substituted.

ARTICLE 312

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in clause (3) of article 312 after the word "shall" the words "if he is a citizen of India" be inserted.

Note: This amendment is hardly necessary as in all probability the Governor of Madras who is now the only Governor who may be held as not being a citizen of India would retire before the commencement of the Constitution. If, however, this amendment is accepted then it should be redrafted as follows :

In clause (3) of article 312, for the words "after such commencement be" the words "if he is a citizen of India, be after such commencement" be substituted.

Drafting Committee : That in clause (3) of article 312, the word "elected" be omitted.

Note: This amendment is consequential in view of the suggestion of the Special Committee that Governors should be appointed by the President directly.

ARTICLE 313

K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari : That in clause (2) of article 313, for the words "each House of Parliament" the words "the Constituent Assembly and shall cease to have effect after six months from the date of the first meeting of the duly constituted Parliament" be substituted.

Note : The reference to each House of Parliament in clause (2) of article 313 may be retained for the present, for if an order is made under clause (1) of that article the day before the first meeting of Parliament duly constituted under Chapter II of Part V of the Constitution, it cannot be laid before the Constituent Assembly functioning as a Provisional Parliament but will have to be laid before each House of Parliament after it is so constituted. During the transitional period, adaptations will have to be made in various provisions of the Constitution by order issued under clause (1) of article 313, and necessary changes will be made by such adaptations also in clause (2) of that article. The substitution of the words "the Constituent Assembly" for the words "each House of Parliament" in clause (2) of article 313 is not therefore necessary.

As for the addition of the words "and shall cease to have effect after six months from the date of the first meeting of the duly constituted Parliament" to clause (2) of article 313, it may be pointed out that power has been given to the President under clause (1) of article 313 to specify the period during which the adaptations shall have effect. It might be necessary to retain some of those adaptations permanently. It would therefore be better not to limit the duration of such adaptations by specific provision in the Constitution, but it should be left to the President to determine according to the circumstances of each case the period during which the adaptation shall remain in force.

If, however, it is decided to accept the time-limit with regard to the duration of the adaptations proposed in this amendment, then the amendment should be redrafted as follows :

To clause (2) of article 313, the words "and shall cease to have effect on the expiration of a period of six months after the first meeting of Parliament duly constituted under the said Chapter" be added.

ARTICLE 314

Tajamul Husain : That at the end of article 314 the words "first of April, 1951" be added.

Note : This amendment seeks to insert the first day of April 1951 as the date of commencement of the Constitution in article 314. There is no doubt that some period must intervene between the passing of the Constitution and its commencement to enable all preparatory action to be

taken during that period for the commencement of the Constitution. What that period would be is a matter to be decided by the Constituent Assembly. It may be pointed out that the elections for the Constitution of the new Legislatures under the new Constitution cannot take place until after the necessary electoral law has been passed and such electoral law cannot be passed until after the Constitution comes into operation.

ARTICLE 315

Drafting Committee : That in article 315, after the words and figures "the Indian Independence Act, 1947" the words "so far as its provisions are repugnant to this Constitution" be inserted.

Note : This article provides without any qualification that the Indian Independence Act, 1947, and certain other parliamentary enactments shall cease to have effect. There are, however, certain provisions of the Indian Independence Act which should not cease to have effect : for example, there is no reason why the provisions of that Act stating that His Majesty's Government in the United Kingdom have no longer any responsibility as respects the Government of any of the territories which, immediately before August 15, 1947, were included in British India, that the suzerainty of His Majesty over the Indian States lapses, etc., should not continue to remain in force. There is nothing in these provisions repugnant to the new Indian Constitution. Hence the proposed amendment.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

21. *Fifth Schedule (Scheduled Areas)*

PARAGRAPH 4

Boniface Lakra : That in sub-paragraph (1) of paragraph 4 of the Fifth Schedule for the words "As soon as may be after", the words "Within three months from" be substituted.

Note : Sub-paragraph (1) of paragraph 4 in Part II of the Fifth Schedule follows the recommendation of the Sub-Committee on Excluded and Partially Excluded Areas of Provinces (other than Assam) as adopted by the Advisory Committee. It is hardly desirable to fix a time limit for the establishment of the Tribes Advisory Council. The expression "As soon as may be after the commencement of this Constitution" clearly indicates that such council should be established without delay after the commencement of the Constitution.

Boniface Lakra : That in sub-paragraph (2) of paragraph 4 of the Fifth Schedule the words "if any" be deleted.

Note : The words "if any" have been inserted in sub-paragraph (2) of paragraph 4 as there are no Scheduled Areas in West Bengal which will also have a Tribes Advisory Council. The Tribes Advisory Council in West Bengal will advise on all matters pertaining to the welfare of the Scheduled Tribes in the State.

Boniface Lakra : That the following be inserted as sub-paragraph (3) of paragraph 4 of the Fifth Schedule and the existing sub-paragraph (3) be renumbered as sub-paragraph (4) :

(3) The Tribal Minister will be in charge of the tribal welfare and any other matters of social or political importance affecting the general administration of the Scheduled Area or any part thereof.

Note : Provision has been made in the proviso to clause (1) of article 144 for a Minister in charge of tribal welfare in the States of Bihar, Central Provinces and Berar, and Orissa, following the recommendation of the Sub-Committee on Excluded and Partially Excluded Areas of Provinces (Other than Assam) as adopted by the Advisory Committee. Detailed provisions as to the allocation of business among the Ministers will be provided for in the rules of business. Presumably it is intended by the proposed amendment that the States of Madras, Bombay and West Bengal, which will have a Tribes Advisory Council under paragraph 4 of the Fifth Schedule, should have also a Minister in charge of tribal welfare. This point however involves a question of policy.

Boniface Lakra : That the following new paragraph be inserted after paragraph 5 of the Fifth Schedule and the subsequent paragraphs be renumbered accordingly :

6. All appointments by the Government in the Scheduled Area shall be made in consultation with and with the approval of the Tribes Advisory Council only.

Note : This amendment seeks to insert a new paragraph to provide that all appointments by the Governor in the Scheduled Areas shall be made only in consultation with and with the approval of the Tribes Advisory Council. Presumably it is not intended that such appointments will be made even after consultation with the Public Service Commission for the State. This involves a question of policy.

PARAGRAPH 5

The Government of Orissa has questioned the propriety of the provisions contained in sub-paragraph (1) of paragraph 5 in Part II of the Fifth Schedule and has made the following comments :

Under section 92(1) of the Government of India Act, 1935 no Act of the Federal or Provincial Legislature applies to a partially excluded area unless the appropriate Provincial Government so directs by a notification. The plan followed in the Draft Constitution of India is, however, fundamentally

different. The idea underlying paragraph 5(1) of Part II of the Fifth Schedule to the Draft Constitution is that as soon as an Act of the Federal or the Provincial Legislature is passed, it will apply automatically to all Scheduled Areas unless the Governor on the advice of the Tribes Advisory Council directs, in respect of any particular legislation, either that it shall not apply to any specified Scheduled Areas or that it shall apply to such areas, subject to specified exceptions and modifications. Although on the whole the Government of Orissa prefer the plan indicated in para 5(1) of Part II of the Fifth Schedule to the Draft Constitution to the provision of section 92(1) of the Government of India Act, 1935, they apprehend that difficulties, mainly of an administrative nature, might arise out of the inevitable time lag between the passing of an Act by either the Dominion or the State Legislature and the decision of the Governor either that the Act shall not apply to any Scheduled Area or that in its application to such an area, it shall be subject to certain modifications and exceptions. Since the position will be that as soon as an Act is passed by a Legislature it will apply in all Scheduled Areas, certain rights and obligations will be created or modified by virtue of the Act. The accrual of such rights and obligations in the interim period might give rise to an awkward situation if it is decided subsequently (and a direction is made to that effect), either that the Act shall not apply to Scheduled Areas or that it shall apply to such areas subject to certain specified exceptions and modifications. It is of course possible to give retrospective effect to the directions made under para 5(1) in order to secure that the exceptions and modifications subject to which the Act is applied to Scheduled Areas will have effect therein from the date of the passing of the Act. If that is done, consequential provisions will have to be inserted by way of 'modifications' in order to regularize anything done under the Act during the interim period. Even so, however, it is likely that the rights of several parties might be seriously affected and there might be much confusion. The Provincial Government, however, see no easy solution of such difficulties if the plan envisaged in para 5(1) of Part II of the Fifth Schedule is adhered to.

Note : The provisions of sub-paragraph (1) of paragraph 5 of the Fifth Schedule are based on the recommendation of the Sub-Committee on Excluded and Partially Excluded Areas (Other than Assam) as adopted by the Advisory Committee. Attention is invited in this connection to paragraphs 10 and 11 of Volume I [Report of the Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee]. It will appear from the said report that the present system under which the Governor in his discretion applies the legislation did not appeal to the committee as this principle would be regarded as undemocratic even though the Governor in future might be an elected functionary. The criticism offered by the Government of Orissa to the provision set out in sub-paragraph (1) of paragraph 5 will also apply if the present provisions of the Government

of India Act, 1935, under which no Act of the Central or a Provincial Legislature applies to an excluded or a partially excluded area unless the Governor by a public notification so directs, is adopted; for, if in such case it is essential that an Act of the Central or a Provincial Legislature should apply to any such area along with other areas on the date when it becomes law after it has been assented to, there is bound to be some time lag between the passing of the Act and the decision of the Governor that the Act shall apply to such area or that in its application to such area it shall be subject to certain modifications and exceptions as in the present case. A decision will have to be arrived at in either case as to the application or non-application of the Act when the Bill is passing through the Legislature and a notification will have to be kept ready for issue on the date the Bill on being assented to becomes law.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to recast the proviso to sub-paragraph (1) of paragraph 5 of Part II of the Fifth Schedule as follows :

Provided that where such Act relates to any of the following subjects, that is to say :

(a) marriage, inheritance or property or social customs of the Scheduled Tribes ;

(b) and (c) (Omit) ;

(d) land, other than lands which are reserved forests under the Indian Forest Act, 1927, or under any other law for the time being in force in the area in question, including rights of tenants, allotment of land and reservation of land for any purpose ;

(e) any matter relating to village administration including the establishment of village panchayats.

the Governor shall issue such direction when so advised by the Tribes Advisory Council,

The Government of Orissa has also made the following comments with regard to sub-paragraph (2) of paragraph 5 of Part II of the Fifth Schedule :

With reference to the Governor's power to make regulations under paragraph 5(2) of Part II of the Fifth Schedule, the question has been raised whether the power is as plenary as the power at present conferred by section 92(2) of the Government of India Act, 1935. A regulation made under section 92(2) may deal with any subject irrespective of whether it is included in the Central, Provincial or Concurrent List; it may even amend a Central Act. Since, however, sub-paragraph (4) of paragraph 5 of Part II of the Fifth Schedule does not specifically refer to the Dominion Parliament, the Provincial Government are doubtful if the power to make regulations conferred by sub-paragraph (2) of paragraph 5 will be equally plenary or will be restricted to matters on which the State Legislature will be competent to legislate. Although the term "appropriate legislature" used in sub-paragraph (4)

of paragraph 5 would etymologically include the "Dominion Parliament" as well as "the State Legislature", it appears from a perusal of the Draft Constitution that the draftsman made a distinction between "Parliament" on the one hand and "State Legislature" on the other. It may, therefore, be the intention of the Draft Constitution that the Governor's power to make regulations under sub-paragraph (2) of paragraph 5 will not extend to matters included in the Central List. If that is the plan, the Provincial Government beg to differ from it, as they feel that the Provincial Governor's power to make regulations for the good government of Scheduled Areas should continue to be as plenary as it is at present.

Note: The power to make regulations conferred by sub-paragraph (2) of paragraph 5 is not restricted only to matters on which the State Legislature will be competent to legislate. The expression "with respect to any matter not provided for by any law for the time being in force in such area" in sub-paragraph (2) of paragraph 5 and the use of the expression "appropriate legislature" in sub-paragraph (4) of that paragraph make it clear that the power to make regulations under sub-paragraph (2) of that paragraph is not restricted only to matters with respect to which the Legislature of the State is competent to legislate. Any further clarification is hardly necessary. However, to make the intention clearer the following amendment may be made in paragraph 5 of Part II of the Fifth Schedule :

In sub-paragraph (2) of paragraph 5 of the Fifth Schedule, the following be added at the end :

and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

Decision of the Drafting Committee, October, 1948: The Drafting Committee decided to substitute the following for sub-paragraph (2) of paragraph 5 of Part II of the Fifth Schedule :

(2) The Governor may, after consultation with the Tribes Advisory Council for the State, make regulations for any Scheduled Area in the State with respect to any matter not provided for by any law for the time being in force in such area, and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area :

Provided that any regulations so made with respect to any matter enumerated in the Union List shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

PARAGRAPH 6

K. Santhanam : That in paragraph 6 (1) of Part II of the Fifth Schedule,

the following be added at the end :

except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council ;

Note : Sub-paragraph (1) of paragraph 6 of the Fifth Schedule follows the recommendation of the Excluded Areas Sub-Committee as adopted by the Advisory Committee. But, *prima facie*, there should be no objection to the amendment : *cf.* the wording of sub-paragraph (2).

L. N. Sahu : That a suitable proviso be added to paragraph 6 (1) of the Fifth Schedule to permit the making of regulations by the Provincial Government in order to prohibit the transfer of lands by members of a particular Scheduled Tribe to members of any other Scheduled Tribe.

Note : Paragraph 6 of Part II of the Fifth Schedule follows the recommendation of the Sub-Committee on Excluded Areas as adopted by the Advisory Committee. This amendment involves a question of policy. If it is accepted, then it should be redrafted as follows :

After sub-paragraph (3) of paragraph 5 of the Part II of the Fifth Schedule, the following sub-paragraph be inserted :

(3-a) The Governor may also make regulations so as to prohibit the transfer of any land in a Scheduled Area in the State by a member of any Scheduled Tribe to a member of any other Scheduled Tribe.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to recast sub-paragraph (1) of paragraph 6 of Part II of the Fifth Schedule as follows :

(1) It shall not be lawful for a member of the Scheduled Tribes to transfer any land in a Scheduled Area to any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council.

PARAGRAPH 9

Boniface Lakra : That the following new paragraph be inserted in the Fifth Schedule as paragraph 9 and the existing paragraph 9 and subsequent paragraphs be renumbered accordingly :

9. The Federal Government should take special and direct interest in the development of the Tribes and that of Scheduled Areas. The provincial finances therefore need to be strengthened by subventions from the Central fisc. The Central Government will also require the Provincial Governments to draw up schemes for the early development of the Scheduled Areas.

Note : Provision has been made in article 255 for special grants to meet the costs of schemes of development for the purpose of promoting the welfare of the Scheduled Tribes in a State in Part I of the First Schedule

or for raising the level of administration of the Scheduled Areas in such State to that of the administration of the rest of the areas of that State following the recommendation of the Sub-Committee on Excluded and Partially Excluded Areas of Provinces (Other than Assam) as adopted by the Advisory Committee. Provision has also been made in article 300 of the Draft Constitution for the appointment of a Commission by the President to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States in Part I of the First Schedule and it has been specifically provided in that article that the executive power of the Union shall extend to the giving of directions to such States as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in such States. This amendment is therefore hardly necessary.

PARAGRAPH 12

K. Santhanam : That in paragraph 12 (2) of Part III of the Fifth Schedule, after the words "so as to prohibit" the words "or regulate" be inserted.

Note : Sub-paragraph (2) of paragraph 12 follows the recommendation of the Excluded Areas Sub-Committee as adopted by the Advisory Committee. This amendment may, however, be accepted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to recast sub-paragraph (2) of paragraph 12 of Part III of the Fifth Schedule as follows :

(2) The Governor may also make regulations so as to control or prohibit the transfer of any land in a Scheduled Area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

PARAGRAPH 17

K. Santhanam : That in paragraph 17(2) of Part IV of the Fifth Schedule, after the words "so as to prohibit" the words "or regulate" be inserted.

Note : The remarks on the amendment to paragraph 12 above would also apply to this amendment. This amendment may be accepted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to recast sub-paragraph (2) of paragraph 17 of Part IV of the Fifth Schedule as follows :

(2) The Governor may also make regulations so as to control or prohibit the transfer of any land in a Scheduled Area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

PARAGRAPH 18

Boniface Lakra : That in the Table under paragraph 18 of Part V of the Fifth Schedule, under V-Bihar, for the words "The Ranchi and Singhbhum Districts, and the Latehar sub-division of the Palamau District of the Chhota Nagpur Division", the following be substituted :

The five districts of the Chhota Nagpur Division (*i.e.*, Ranchi, Hazaribagh, Palamau, Manbhum and Singhbhum) and the entire district of the Santhal Parganas.

Note : The entry relating to Bihar in the Table appended to paragraph 18 in Part V of the Fifth Schedule follows the recommendation of the Sub-Committee on Excluded and Partially Excluded Areas of Provinces (Other than Assam) as adopted by the Advisory Committee. This amendment seeks to make a departure from that recommendation and thus involves a question of policy.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the following amendment to the Table under paragraph 18 in Part V of the Fifth Schedule :

That in the Table under paragraph 18 in Part V of the Fifth Schedule, under I-Madras for the second item, the following be substituted :

The East Godavari, West Godavari and Vizagapatam Agency areas.

22. Sixth Schedule (Tribal Areas in Assam)

PARAGRAPH 2

K. Santhanam : That after sub-paragraph (7) of paragraph 2 of the Sixth Schedule, the following new sub-paragraph (7-A) be inserted :

(7-A) The District Council, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as dissolution of the Council :

Provided that the said period may be extended by the Governor for a period not exceeding one year at a time.

Note : The report* of the Assam Tribal and Excluded Areas Sub-Committee does not contain any specific recommendation as to the duration of the District Councils and Regional Councils. It must be remembered that under paragraph 2(4) of the Schedule, these councils are corporate bodies with perpetual succession and the term "dissolution" with regard to such bodies has usually a meaning different from that of the same term when used with respect to ordinary legislative bodies. Paragraph R of the sub-committee's report and the corresponding paragraph 16 of the present Schedule contain a provision for "dissolution" upon the recommendation

*See Vol. III, Document 7.

of a special commission appointed by the Governor; but this is not the periodical dissolution that is usually provided for in the case of legislative bodies. The framers of the report probably contemplated that the members of these councils would be replaced from time to time, not by a provision for periodical dissolution, but by prescribing a term of office for the members, by rules under sub-paragraphs (7) and (8) of paragraph 2. It will be noticed that item (e) in sub-paragraph (7) refers to "any other matter relating to or connected with elections or nominations to such councils". Possibly, this was considered to be wide enough to include a rule prescribing the term of office of elected or nominated members. To remove any doubt on this point, the following amendment may be made :

In sub-paragraph (7) of paragraph 2 of the Sixth Schedule, after clause (d), the following clause be inserted :

(dd) the term of office of members of such Councils.

If this amendment is made, the amendment proposed by K. Santhanam would be unnecessary.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment suggested by the Constitutional Adviser.

PARAGRAPH 4

J. J. M. Nichols Roy : That the following proviso be added to sub-paragraph (2) of paragraph 4 of the Sixth Schedule :

Provided that the Assam High Court shall have power of revision in cases where there is failure of justice or where the authority exercised by the district court is without jurisdiction.

Note : See note on the amendment proposed by the Drafting Committee.

Drafting Committee : That to sub-paragraph (2) of paragraph 4, the following proviso be added :

Provided that the High Court of Assam shall have power to revise any decision of any such Council or Court in any case where there has been a failure of justice or where the Council or Court has acted without jurisdiction.

Note : Nichols Roy proposed in the Advisory Committee, and the Advisory Committee agreed, that the following proviso be added to sub-paragraph (2) of paragraph 4 of the Sixth Schedule, namely :

Provided that the Assam High Court shall have power of revision in cases where there is failure of justice or where the authority exercised by the District Court is without jurisdiction.

This amendment would, however, require to be redrafted as now proposed. The Drafting Committee has agreed to the redraft.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to add the following proviso to sub-paragraph (2) of

paragraph 4 of the Sixth Schedule :

Provided that the High Court of Assam shall have power to revise any decisions of any such Council or Court in any case where there has been a failure of justice or where the Council or Court has acted without jurisdiction.

PARAGRAPH 13

K. Santhanam : That in paragraph 13 of the Sixth Schedule after the words "the State of Assam shall be" the words "first placed before the District Council for discussion and" be inserted.

Note : This amendment, if accepted, should be redrafted as follows :

In paragraph 13 of the Sixth Schedule, for the words "shall be" the words "shall first be placed before the District Council for discussion and then after such discussion be" be substituted.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to recast paragraph 13 of the Sixth Schedule as follows :

13. The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from the revenues of the State of Assam shall first be placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 177 of this Constitution.

PARAGRAPH 14

K. Santhanam : That in sub-paragraph (1) of paragraph 14, after the word "districts", wherever it occurs, the words "and regions" be inserted.

Note : This amendment is hardly necessary as autonomous districts would include autonomous regions in view of paragraph 1 of the Sixth Schedule and no separate mention of autonomous regions appears to be necessary in sub-paragraph (1) of paragraph 14 of that Schedule. If, however, this amendment is accepted, then the following amendments would be necessary:

(1) In sub-paragraph (1) of paragraph 14, after the words "autonomous districts" in the two places where they occur, the words "and autonomous regions" be inserted.

(2) In clauses (a) and (b) of sub-paragraph (1) of paragraph 14, after the word "districts" the words "or regions" be inserted.

K. Santhanam : That the following be inserted as a new item in sub-paragraph (1) of paragraph 14 of the Sixth Schedule :

(d) readjustment of areas and relations between the autonomous districts and regions ;

Note : Sub-paragraph (1) of paragraph 14 follows the recommendations of the Assam Tribal and Excluded Areas Sub-Committee as adopted by

the Advisory Committee. The Commission is intended for inquiry into and report on the general administration of autonomous districts. This would include every aspect of the administration. There is, therefore, no objection to the amendment, except perhaps that it is hardly necessary.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to recast sub-paragraph (1) of paragraph 14 of the Sixth Schedule as follows :

(1) The Governor of Assam may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

(a) the provision of educational and medical facilities and communications in such districts or regions ;

(b) the need for any new or special legislation in respect of such districts or regions ; and

(c) the administration of the laws, regulations and rules made by the District and Regional Councils ;

and define the procedure to be followed by such Commission.

PARAGRAPH 15

Drafting Committee : That sub-paragraph (3) of paragraph 15 of the Sixth Schedule be omitted.

Note : This amendment has been proposed in order to give effect to the views of the Special Committee that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor the amendment.

PARAGRAPH 17

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to add the following sub-paragraph (3) to paragraph 17 of the Sixth Schedule :

(3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the Agent of the President the Governor shall act in his discretion.

PARAGRAPH 18

K. Santhanam : That for sub-paragraph (a) of paragraph 18, the

following be substituted :

(a) the Governor may direct that any Act of Parliament or of the Legislature of the State shall apply to such area or any specified part thereof or such Act shall have effect subject to such exceptions or modifications as he thinks fit.

Note : The precise intention of this amendment is not clear. Take an Act passed by the Assam Legislature which is expressed to extend to the whole of Assam. Under the provisions of paragraph 18 (a) as they stand at present the Act will not apply to an autonomous district in spite of its being so expressed, unless there is a direction by the Governor ; but under the proposed amendment, the position is ambiguous. "The Governor may direct that an Act of the Legislature shall apply to such area", says the amendment ; supposing he omits to make a direction, will the Act operate according to its own terms and extend to the whole of Assam including the autonomous districts ? Or, is there an implication to the contrary ? It is better to be explicit in these matters. *Cf.* the provision in section 92(1) of the Government of India Act, 1935. This amendment cannot therefore be accepted.

Drafting Committee : That clause (c) of paragraph 18 of the Sixth Schedule be omitted.

Note : This amendment has been proposed in order to give effect to the views of the Special Committee that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution.

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to sponsor its amendment.

PARAGRAPH 19

Decision of the Drafting Committee, October, 1948 : The Drafting Committee decided to add the following proviso to paragraph 19 of the Sixth Schedule :

Provided that the tribal areas specified in Part II of that Table shall not include any areas situated in the plains notified in that behalf by the Governor of Assam and any reference to such tribal areas in this Constitution shall be construed accordingly.

(II) MINUTES OF THE DRAFTING COMMITTEE March 23, 24 and 27, 1948

March 23, 1948

Present : (1) The Hon'ble Dr. B. R. Ambedkar, (*In the Chair*) ;
(2) Shri K. M. Munshi ; (3) Shri N. Madhava Rao.

In attendance: (1) Sir B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary; (4) Shri K. V. Padmanabhan, Under Secretary.

1. The committee considered the amendments to, and comments on, the Draft Constitution, a list of which was circulated to the members of the committee, and came to the following conclusions:

Preamble: In the Preamble, for the word "REPUBLIC" the word "STATE" should be substituted.

Article 3: For the proviso to article 3, the following proviso should be substituted:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless:

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where such proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been obtained.

Article 5: For article 5, the following article should be substituted:

5. At the date of commencement of this Constitution—

(a) every person who or either of whose parents or any of whose grandparents was born in the territory of India and who has not made his permanent abode in any foreign country after the first day of April 1947; and

(b) every person who has his domicile in the territory of India,

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign country.

Explanation: (As in the existing Draft).

Article 8: In the proviso to clause (2) of article 8, for the words "existing law" the words "grant or contract" should be substituted to make the intention clearer.

Article 10: The amendments proposed by Shri Thakurdas Bhargava and Seth Govind Das to this article were not agreed to as franchise has been dealt with specially in articles 67(6) and 149(2), and adult suffrage, subject to certain conditions, had been prescribed.

Article 12: For clause (1) of this article, the following clause should be substituted:

(1) Titles or other privileges of birth shall not be conferred by the State.

Article 13: The amendments proposed by Shri Thakurdas Bhargava and Seth Govind Das to this article were not agreed to for the reasons given above as respects amendments proposed in article 10.

Article 15: Shri K. M. Munshi proposed to restore the words "without due process of law" in this article. After discussion it was decided that no change should be made in this article.

Article 22: In clause (1) of article 22 the words "by the State" should be omitted as redundant.

New Article 22-A: This new article proposed by Seth Govind Das and Shri Thakurdas Bhargava and the consequential amendments proposed by Seth Govind Das in article 23 involve questions of policy which the Drafting Committee would leave to the decision of the Constituent Assembly.

Article 31: The amendment proposed by Shri Thakurdas Bhargava and Seth Govind Das to this article was not agreed to for the reasons stated above as respects amendments proposed in article 10.

Article 67: The following modifications should be made in article 67:

(1) In clause (1), for the words "two hundred and fifty members" the words "not more than two hundred and fifty members" should be substituted.

(2) The proviso to clause (1) should be omitted.

(3) After clause (1), the following clause should be inserted:

(1-a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in the Ninth Schedule.

But the proposed Ninth Schedule should for the present be left blank and should be filled in at a later stage before the Constitution is finally passed, when the position of the Indian States resulting from the various "mergers" now taking place has become clearer.

The following further modifications should be made in article 67:

(1) In sub-clause (b) of clause (5), after the words "each such constituency" insert the words "save in the case of constituencies having seats reserved for the purposes of article 292 of this Constitution".

(2) To sub-clause (c) of clause (5) add the following proviso:

Provided that nothing in this clause shall apply to constituencies having seats reserved for the purposes of article 292 of this Constitution.

Article 83: The committee did not agree to the amendments proposed by Shri Thakurdas Bhargava and Seth Govind Das to this article or to the insertion of two new articles 83-A and 83-B proposed by them, as they are contrary to the decisions already taken by the Constituent Assembly.

**Article 99*: The amendments proposed by Dr. Sachchidananda Sinha, Shri Thakurdas Bhargava and Seth Govind Das to this article involve questions of policy the decision of which should be left to the Constituent Assembly.

Article 103: In Explanation II to clause (3) of article 103, after the words "judicial office" the words "not inferior to that of a district judge" should be inserted.

Article 107 : The words "subject to the provisions of this article" should be omitted as redundant.

Article 109 : For the words "if in so far" the words "if and in so far" should be substituted to correct a printing error.

Article 122 : For article 122, the following article should be substituted :

122. (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of the court as he may direct :

Provided that the President may require that in such cases as he may direct, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorized by the Chief Justice of India to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of India in consultation with the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.

Article 149 : In clause (3) of article 149, after the words "save in the case of the autonomous districts of Assam" the words "and in the case of constituencies having seats reserved for the purposes of article 294 of this Constitution" should be inserted for the reasons given in the Constitutional Adviser's note.

**Article 184* : The amendments proposed by Dr. Sachchidananda Sinha, Shri Thakurdas Bhargava and Seth Govind Das to this article involve questions of policy the decision of which should be left to the Constituent Assembly.

2. The committee then adjourned till 10.30 A.M. on the 24th March, 1948.

March 24, 1948

Present : (1) The Hon'ble Dr. B. R. Ambedkar, (*In the Chair*); (2) Maulavi Saiyid Muhammad Saadullah; (3) Shri N. Madhava Rao.

In attendance : (1) Sir B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary; (4) Shri K. V. Padmanabhan, Under-Secretary.

*See also minutes of March 27, 1948; pp. 403-4 *infra*.

1. The committee resumed consideration of the amendments to, and comments on, the Draft Constitution and came to the following conclusions :

Article 193 : It appeared to the committee from some of the comments received on this article that the intention of this article had been misunderstood. It was not the intention that the Legislature of the State should, by law, extend the age-limit for each individual judge as he was about to retire. What was intended was that the Legislature of the State should pass a general law fixing the age-limit for all judges in the High Court in that State. In view, however, of the general desire that the age-limit should be fixed definitely in the Constitution itself instead of being left to each State Legislature, the words "sixty-five years" should be substituted for "sixty years or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State".

Article 196 : The committee agreed with the views expressed by the Right Hon'ble Sir Tej Bahadur Sapru and Sir Jialal on this article, and it was decided that the following amendments should be made in this article :

(1) After the words "No person who has held office" the words "after the commencement of this Constitution" should be inserted.

(2) The words "on having been recruited from the Bar" should be omitted from clause (b).

Article 197 and Part IV of the Second Schedule : The committee have considered the question whether High Court judges who are now holding office on certain salaries should continue to receive the same salaries if they elect to remain on the Bench after the commencement of the new Constitution or whether they should, upon so electing, receive the same salaries as those who are first appointed after the commencement of the new Constitution. The committee have endeavoured to fix a scale of salaries for High Court judges with due regard to the financial capacity of the country and to the salaries paid in other countries for similar work. It is undoubtedly true that persons appointed before the commencement of the new Constitution on higher salaries had a reasonable expectation that they would not be reduced at least for them and this argument would have considerable force if exceptions were made in favour of existing incumbents in other departments of the public service. But if there is a general scaling down of all salaries applicable to all officers, whether existing incumbents or new recruits, it would not be possible to make an exception only in the case of judges. The committee also feel that it would be an anomaly to pay some judges one salary and their colleagues doing the same kind of work a higher salary. On the assumption that there is going to be a general scaling down of all salaries, the committee have decided to retain the provision in the Draft that when a High Court judge now in office elects to continue in office under the new Constitution, he should be subject to the new scale of pay proposed under the Constitution.

Articles 198 and 199: As regards the suggestion of the Calcutta High Court that provision should be included in the Constitution itself for consultation with the Chief Justice of the High Court before appointments of acting and additional judges of the High Court are made, the committee was of opinion that such requirements as to previous consultation should not be inserted in the Constitution itself. It would be desirable to append to the Constitution an Instrument of Instructions for the President just as there is one for Governors. In that instrument, instructions could be given as to the manner of appointment of judges as well as other matters. The committee agree that the Chief Justice of the High Court should be consulted before any judge, whether permanent, additional or temporary, is appointed.

Article 200: The words "subject to the provisions of this article" should be omitted as redundant.

Article 205: For article 205, the following article should be substituted :

205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the court or such other judge or officer of the court as he may direct :

Provided that the Governor of the State in which the High Court has its principal seat may require that in such cases as he may direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the court or by some other judge or officer of the court authorized by the Chief Justice to make rules for the purpose :

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the court in consultation with the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of officers and servants of the court, and the salaries and allowances of the judges of the court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the court shall form part of those revenues.

Article 212: For clause (2) of article 212, the following should be substituted :

(2) Any State for the time being specified in Part III of the First Schedule whose Ruler has ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State to the Government of India or any group of such States shall be administered in all respects as if the State or the group of States were for the time being specified in

Part II of the First Schedule; and, accordingly all the provisions of this Constitution relating to States specified in the said Part shall apply to such State or group of States :

Provided that the President may at any time by order direct that any such State or any group of such States shall be governed for all purposes as if the State or the group of States formed part of a named State specified for the time being in Part I of the First Schedule; and he may by such order give such incidental and consequential directions (including directions as to representation in the Legislature) as may be necessary for the purpose.

Article 214: In article 214, for the words "shall remain unchanged" the words "shall be the same as they were immediately before the commencement of this Constitution" should be substituted.

Article 280: In article 280, for the words "a period of six months after the proclamation has ceased to be in operation" the words "the period during which the proclamation is in operation" should be substituted.

Articles 292, 293, 294 and 295: The amendments proposed in these articles by Seth Govind Das and Shri Thakurdas Bhargava were not agreed to by the committee as they were contrary to the decisions of the Constituent Assembly. If the provision for reservation of seats for minorities be replaced by a provision for nomination of members of minority communities by the President or the Governor, as the case may be, then the number of nominations may be so large as to nullify democratic government.

Articles 297 and 298: The suggestion that the special safeguards relating to employment and education grants provided for the Anglo-Indian community in these two articles should be omitted, involves questions of policy the decision of which should be left to the Constituent Assembly.

Article 282: The committee considered that there was force in the comments advanced by the Calcutta High Court and the Nagpur High Court that the powers of appointment, posting and promotion of members of the subordinate judiciary should be in the hands of the High Court which possesses the requisite information and knowledge about the individual merits of the members thereof. Accordingly, provisions similar to those contained in sections 254 and 255 of the Government of India Act, 1935, should be included in the Constitution itself subject to the modification that the powers with regard to posting and promotion of district judges in any State should be also vested in the High Court instead of in the Governor of the State. It was accordingly decided that :

- (1) in clause (1) of article 282 for the words "the provisions of clause (2) of this article" the words "the provisions of this Constitution" should be substituted; and

- (2) after article 282, the following should be inserted :

282-A. *District Judges, etc.:* (1) Appointments of persons to be district judges in any State shall be made by the Governor of the State and the

High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than five years an advocate or a pleader and is recommended by the High Court for appointment.

(3) In this and the next two succeeding articles, the expression "district judge" includes additional district judge, joint district judge, assistant district judge, chief judge of a small causes court, chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

282-B. Subordinate civil judicial service : (1) The Governor of each State shall, after consultation with the State Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate civil judicial service of the State.

Explanation : In this article, the expression "subordinate civil judicial service" means a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge.

(2) The State Public Service Commission for each State, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the State make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists.

282-C. Posting and promotion of, and the grant of leave to district judges and persons belonging to the subordinate civil judicial service of a State : The posting and promotion of, and the grant of leave to, district judges in any State, and persons belonging to the subordinate civil judicial service of a State and holding any post inferior to the post of district judge shall be in the hands of the High Court, but nothing in this article shall be construed as taking away from a district judge or any such person any right of appeal which he may have under any law for the time being in force, or as authorizing the High Court to deal with a district judge or any such person otherwise than in accordance with the conditions of his service prescribed under any such law.

Explanation : In this article, the expression "law" includes any order, bye-law, rule, regulation or notification having the force of law in the territory of India or any part thereof.

Article 305 : The amendment proposed by Shri P. M. Velayudapani involves questions of policy the decision of which should be left to the Constituent Assembly.

Article 310 : At the beginning of article 310 before the words "The

judges of a High Court" the words "Notwithstanding anything contained in clause (2) of article 193 of this Constitution" should be inserted to make it clear that European judges of High Courts in the Provinces immediately before the commencement of this Constitution would not, if they elect to become judges of the High Courts in the corresponding States, be disqualified on the ground that they are not citizens of India.

Articles 82 and 166: The committee was of the view that dual membership both of Parliament and the Legislature of any State, whether it is a State in Part I or Part III of the First Schedule, should be prohibited, and accordingly :

(1) after clause (1) of article 82, the following clause should be inserted :

(1-a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person is chosen a member both of Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(2) clause (2) in article 166 should be omitted.

Second Schedule, Part III: In paragraph 8 in Part III of the Second Schedule, for the words "respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State" the words "to the Deputy President of the Legislative Assembly of the Indian Legislature" should be substituted to correct a clerical error.

Sixth Schedule, Paragraph 4: The committee agreed to the amendment proposed by Shri Nichols Roy in sub-paragraph (2) of paragraph 4 of the Sixth Schedule in the Advisory Committee, and it was decided that to the said sub-paragraph the following proviso should be added, namely :

Provided that the High Court of Assam shall have power to revise any decision of any such council or court in any case where there has been a failure of justice or where the council or court has acted without jurisdiction.

Seventh Schedule, List I, Entry 4: The Chairman stressed his personal view that the second part of this entry relating to Armed Forces in States in Part III of the First Schedule should be deleted in order to preclude such States from maintaining any Armed Forces of their own, and desired that the attention of the committee which would shortly meet to consider the Draft Constitution should be drawn to his view on this point.

Entry 56: For entry 56 in List I, the following should be substituted :

56. Inquiries, surveys and statistics for the purpose of any of the matters in this list.

Entry 74: The following words should be added to entry 74 of this List :

and for such other purposes as are declared by Parliament by law to be

purposes for which development of such waterways under the control of the Union is expedient in the public interest.

Lists II and III : Entry 64 should be omitted from List II, and for entry 36 in List III the following entry should be substituted :

36. Inquiries and statistics for the purpose of any of the matters specified in List II or List III.

Eighth Schedule : The committee agreed to the suggestion of Shri Nichols Roy for specific inclusion of Khasis (including Syntengs) and Lushais in Part VIII of the Eighth Schedule, and it was decided that the following amendments should be made in Part VIII of the Eighth Schedule :

(1) After item 14, the following items should be inserted :

15. Khasis (including Syntengs).

16. Lushais.

(2) Existing items 15 and 16 should be renumbered as items 17 and 18 respectively.

New Article 38-A : An amendment proposed by Shri Thakurdas Bhargava and Seth Govind Das for insertion of a new article 38-A after article 38 in the Part relating to directive principles of State policy involves a question of policy which should be left to the decision of the Constituent Assembly.

Articles 43 and 44 : The following amendments should be made in articles 43 and 44 :

(1) To article 43, add the following Explanation :

Explanation : In this and the next succeeding article, the expression "the Legislature of a State" means, where the Legislature is bicameral, the Lower House of the Legislature.

(2) In clause (2) of article 4, for the words "each elected member of Parliament and of the Legislature of each State is entitled", substitute the words "each member of Parliament and each elected member of the Legislature of each State are respectively entitled".

(3) In sub-clause (c) of clause (2) of article 44, omit the words "elected".

(4) For the Explanation to article 44, substitute the following :

Explanation : In this article, the expression "population" means the population as ascertained at the last preceding census.

Chapter IV : In the heading to Chapter IV for the words "The Federal Judicature" the words "The Union Judicature" should be substituted to correct a clerical error.

2. The committee then considered the memorandum on the Draft Constitution submitted by Sir V. T. Krishnamachari, Mr. B. H. Zaidi, Raja Sardar Singhji of Khetri, and Sardar Jaidev Singh.

As regards accession, the process envisaged by the Drafting Committee is as follows :

To start with, Part III of the First Schedule will be blank, because we cannot assume that the Indian States will accede to the new Union before

they know the shape of the new Constitution. But after the Draft Constitution, together with all amendments, has been taken into consideration by the Constituent Assembly, a reasonable period may be allowed for negotiation with the Indian States as to which of them would be prepared to accede. When the names of the acceding Indian States have been ascertained—and the Drafting Committee hopes that all those who have acceded to the Dominion of India will accede to the new Union—they will be inserted in the appropriate Part of the First Schedule and the Constitution finally passed. It is of course possible that some of the Indian States will accede subject to terms and this has been recognized in article 225 of the Draft. In order to make the position clear, in article 225 for the word “agreement” the word “instrument” should be substituted and for the words “the Government of India” the words “the Government of the Dominion of India” should be substituted.

Article 202 : To clause (1) of article 202, the following paragraph should be added :

In this clause, the reference to a High Court shall, in respect of the issue of directions or orders referred to therein for the enforcement of any of the rights conferred by Part III of this Constitution, be construed as including a reference to a court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of articles 110 and 113 of this Constitution.

Article 225 : In article 225, for the words “in this Chapter” the words “in the foregoing provisions of this Chapter” should be substituted.

Article 232 : The heading to article 232 should be omitted.

Article 233 : Article 233 should be renumbered as clause (1) of article 233, and to the said clause as so renumbered, the following clause should be added :

(2) Without prejudice to any of the other provisions of this Chapter, in the exercise of the executive power of the Union in any State regard shall be had to the interests of that State.

Article 234 : To article 234 the following clause should be added :

(3) Where, by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last preceding clause of this article, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such directions had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra cost so incurred by the State.

Article 244 : For article 244, the following article should be substituted, namely :

244. Notwithstanding anything contained in article 16 or in the last

preceding article of this Constitution,

(a) it shall be lawful for any State—

(i) to impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(ii) to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse with that State as may be required in the public interest :

Provided that during a period of five years from the commencement of this Constitution the provisions of sub-clause (ii) of this clause shall not apply to trade or commerce in any of the commodities mentioned in clause (a) of article 306 of this Constitution ;

(b) the Union may enter into an agreement with a State for the time being specified in Part III of the First Schedule with respect to the levy and collection of any tax or duty leviable by the State on goods imported into the State from other States or on goods exported from the State to other States, and any agreement entered into under this clause shall continue in force for a period not exceeding ten years from the commencement of this Constitution :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission constituted under article 260 of this Constitution he thinks it necessary to do so.

Article 258 : In clause (2) of article 258, for the words “ten years” the words “fifteen years” should be substituted.

New Article 277-A : After article 277, the following article should be inserted :

277-A. Duty of the Union to protect States against external aggression and domestic violence : It shall be the duty of the Union to protect every State against external aggression and domestic violence.

3. The committee thereafter adjourned till 10 A.M. on the 27th March, 1948.

March 27, 1948

Present: (1) The Hon'ble Dr. B. R. Ambedkar, (*In the Chair*); (2) Maulavi Saiyid Muhammad Saadullah; (3) Shri N. Madhava Rao.

In attendance: (1) Sir B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary.

1. The committee considered the minutes of the meetings held on the 23rd and 24th March, 1948.

Articles 99 and 184 : It was decided that the following note should be

inserted against each of these two articles* in place of the notes appearing against them in the minutes :

In articles 99 and 184 as originally drafted, the words "Hindustani (Hindi or Urdu)" instead of the word "Hindi" were used.

Shri Munshi mentioned to the Drafting Committee that a resolution had been adopted at a meeting of the Congress Party for the changing of the words "Hindustani (Hindi or Urdu)" to "Hindi". The Drafting Committee thereupon by a majority decided that the change should be given effect to, and accordingly articles 99 and 184 as now printed in the Draft contains the word "Hindi" instead of the words "Hindustani (Hindi or Urdu)".

But as the amendments proposed by Dr. Sachchidananda Sinha, Shri Thakurdas Bhargava and Seth Govind Das involve questions of policy, the committee is of opinion that the decision of such questions should be left to the Constituent Assembly.

Article 282 : As regards the insertion of new articles 282-A, 282-B and 282-C after article 282 with regard to the appointment, posting and promotion of district judges and members of the subordinate judicial service, the committee was of opinion that instead of inserting these articles, a new article 39-A should be inserted after article 39 and a new Chapter VIII† should be also inserted after Chapter VII and before Chapter IX in Part VI of the Draft Constitution to secure the separation of the judiciary from the executive and the control of the High Court over the judicial services, civil or criminal.

Seventh Schedule, List I—Entry 74 : The modification suggested in List I of the Seventh Schedule, as shown in the minutes of the meeting held on the 24th March, 1948, should be revised as follows :

The following words should be added to entry 74 :

and for other purposes, where such development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Articles 43 and 44 : The amendments suggested in articles 43 and 44, as shown in the minutes of the meeting held on the 24th March, 1948, should be revised as follows :

(a) In clause (a) of article 43, for the word "members" the words "elected members" should be substituted.

(b) To article 43, the following Explanation should be added namely :

Explanation : In this and the next succeeding article, the expression "the Legislature of a State" means, where the Legislature is bicameral, the Lower House of the Legislature.

(c) For the Explanation to article 44 the following should be substituted :

Explanation : In this article, the expression "population" means the population as ascertained at the last preceding census.

*See pp. 394 and 395 *supra*.

†See Note, pp. 187-9 *supra*.

2. The committee then resumed consideration of the further amendments to, and comments on, the Draft Constitution.

AMENDMENTS PROPOSED BY THE HON'BLE SHRI GOPINATH BARDOLOI

Shri Saadullah pressed for the acceptance of the amendments proposed by Shri Gopinath Bardoloi in the provisions relating to the distribution of revenues between the Union and the States. He explained that contrary to the Drafting Committee's intentions, the *status quo* had already been altered to the detriment of Assam by certain action taken by the Government of India. The committee, however, by a majority recommended that no change should be made in those provisions for the reasons explained by the Chairman of the committee in his letter to the President. It was however recommended by the committee that clause (1) of article 260 with regard to the appointment of the Finance Commission should be redrafted as follows :

(1) The President shall, as soon as practicable but not later than the expiration of five years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

AMENDMENTS PROPOSED BY THE CHIEF JUSTICE AND OTHER JUDGES OF THE PATNA HIGH COURT

Article 111 : The committee recommended that in sub-clause (a) of clause (1) of this article, the words "twenty thousand rupees" should be changed to "fifteen thousand rupees".

Article 115 : The committee was of the view that in article 115, the words and brackets "(which relates to the enforcement of fundamental rights)" should be omitted.

Article 203 : The committee suggested that in clause (2) of this article, before the words "the High Court may" the words "without prejudice to the generality of the foregoing provision" should be inserted to make it clear that it was not intended that the power of superintendence of the High Court should be confined to administrative matters only. The committee also suggested that for the marginal heading to this article the following should be substituted :

Power of superintendence over all courts by the High Court.

The other comments of the judges of the Patna High Court were mostly the same as those previously received from the judges of the Calcutta and Nagpur High Courts which have been already dealt with by the committee.

As regards the suggestion made by the judges of the High Courts that the ban on practice by persons who held office as additional or temporary judges should be removed, the committee expressed the view that it would be better to delete articles 198 and 199 relating to the appointment of temporary and additional judges than to retain those articles without the ban on practice by persons who held office as additional or temporary judges. The committee was of opinion that it was possible to discontinue the system of appointment of temporary and additional judges in High Courts altogether by increasing, if necessary, the total number of permanent judges of such courts.

Article 175 : The committee was further of opinion that a provision for reservation by the Governor of Bills affecting the powers of the High Court for the consideration of the President on the lines of paragraph XVII(b) of the Instrument of Instructions to the Governors under the Government of India Act, 1935, should be included in the Draft. Accordingly, the committee suggested that the following amendments should be made in article 175 :

(a) In the proviso for the words "Provided that" the words "Provided further that" should be substituted ; and

(b) before the proviso as so amended, the following proviso should be inserted :

Provided that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill.

COMMENTS BY SHRI ALLADI KRISHNASWAMI AYYAR

Article 3 : The committee was of opinion that the new draft of article 3 proposed by the committee would mostly meet the points raised by Shri Alladi.

Article 304 : The committee suggested that in clause (2) of article 304, after the word "may" in line 2 on page 150 of the Draft, the word "also" should be inserted to make it clear that the power to amend the Constitution referred to in that clause is a concurrent power and may be exercised either under clause (1) of that article or under clause (2) thereof.

Seventh Schedule, List I : The committee recommended that entry 77 should be omitted from this List because, as pointed out by Shri Alladi Krishnaswami Ayyar, its retention might be open to the construction that there was an omnibus power given to Parliament to deal with emergencies apart from the provisions contained in Part XI of the Draft.

3. The Drafting Committee was of the view that the definition of "Scheduled Castes" in sub-clause (w) of clause (1) of article 303 should

be so revised that a person who was a member of the Scheduled Castes in one State might be treated as a member of the Scheduled Castes in all other States. Accordingly, the committee recommended that the following amendments should be made in article 303 :

- (1) Sub-clause (w) of clause (1) of article 303 should be omitted.
- (2) After clause (1) of article 303, the following clause should be inserted :
 - (1-a) For the purposes of this Constitution the castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Schedule to the Government of India (Scheduled Castes) Order, 1936, to be Scheduled Castes for the purposes of the Fifth and Sixth Schedules to the Government of India Act, 1935, in relation to any Province or part of a Province, shall be deemed to be Scheduled Castes not only in the corresponding State or that part of the corresponding State but throughout the territory of India.

4. The committee also recommended that the following further amendments should be made in the Draft :

Article 8 : For clause (3) of article 8, the following clause should be substituted to provide for a definition of "laws in force" on the lines of Explanation I to article 307 :

(3) In this article—

- (a) the expression "law" includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof ;
- (b) the expression "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Article 9 : In sub-clause (b) of the second paragraph of clause (1) of article 9, for the words "the revenues of the State" the words "State funds" should be substituted, as the expression "the State" used in this article includes all local or other authorities and it is unusual to speak of revenues in relation to a local authority.

Article 27 : The following amendments should be made in article 27 :

- (1) For clause (a) substitute the following :
 - (a) with respect to any of the matters which, under article 16, clause (3) of article 25 and article 26, may be provided for by legislation by Parliament, and
- (2) For the words "to provide for such matters and for prescribing punishment for such acts" substitute the words "for prescribing punishment for the acts referred to in clause (b) of this article".
- (3) For the proviso to article 27, substitute the following :

Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with

respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament or other competent authority.

Explanation: In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.

Article 45: In clause (a) of the proviso to article 45, for the word "resignation" the word "writing" should be substituted to follow the wording used in clause (a) of the proviso to article 56, clause (b) of article 74, clause (b) of article 77 and sub-clause (b) of clause (2) of article 82.

Article 132: In clause (a) of the proviso to article 132, for the word "resignation" the word "writing" should be also substituted for the reasons stated above in the note against article 45.

5. The committee then adjourned *sine die*.

(III) MEETINGS OF THE SPECIAL COMMITTEE

April 10-11, 1948

April 10, 1948

Present: (1) The Hon'ble Pandit Jawaharlal Nehru, (*In the Chair*); (2) The Hon'ble Mr. Rafi Ahmad Kidwai; (3) The Hon'ble Shri Jairamdas Daulatram; (4) The Hon'ble Dr. B. R. Ambedkar; (5) Dr. B. Pattabhi Sitaramayya; (6) Shri Biswanath Das; (7) Prof. K. T. Shah; (8) Shri P. Govinda Menon; (9) Shri Brij Lal Biyani; (10) Diwan Chaman Lall; (11) Dr. P. K. Sen; (12) Shri C. M. Poonacha; (13) Shri Satyanarayan Sinha; (14) Shrimati Hansa Mehta; (15) Dr. H. C. Mookherjee; (16) Acharya J. B. Kripalani; (17) Shri Shankarrao Deo; (18) Shri R. R. Diwakar; (19) Shri S. Nagappa; (20) Shri K. Santhanam; (21) Shri K. M. Munshi; (22) Mr. Naziruddin Ahmad; (23) Mr. B. H. Zaidi; (24) Shri T. T. Krishnamachari; (25) Shrimati G. Durgabai; (26) Shri Thakurdas Bhargava; (27) Dr. B. V. Keskar; (28) Shri Gokulbhai D. Bhatt; (29) Shri S. V. Krishnamoorthy Rao; (30) Shri Kishori Mohan Tripathi.

In attendance: (1) Sir B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary; (4) Shri K. V. Padmanabhan, Under Secretary.

1. The committee considered the matters referred to in the letter of the Chairman of the Drafting Committee to the President of the Constituent Assembly of India, dated the 21st February, 1948*.

Paragraph 2 (Preamble): The consideration of the amendments to the

*See Vol. III, Document No. 6, pp. 509-17.

Preamble was held over and it was decided that the final settlement of the Preamble should be left to the decision of the Constituent Assembly.

Paragraph 4 (Article 5): The committee was of opinion that article 5 should be divided into two parts, one dealing with cases of general application and the other dealing with persons who have left India with the intention of acquiring a fixed habitation in other countries or who have migrated to India from other countries for acquiring such habitation in India. It was accordingly decided that in the redraft of article 5 of Part I of the list of amendments circulated to the members, the words "who has not made his permanent abode in any foreign country after the first day of April 1947" should be omitted from clause (a), and clause (ii) of the existing Explanation to this article be also omitted, and that a separate provision dealing with persons who have left India with the intention of acquiring a fixed habitation outside India or who have migrated to India and have taken up such habitation here should be made.

Paragraph 5 (Fundamental Rights—Article 13): The committee was of the view that in clause (2) of article 13 for the word "authority" the word "security" should be substituted.

The committee was also of the view that in clause (4) of this article for the words "in the interests of the general public" the words "in the interest of public order or morality" should be substituted.

It was suggested by some members that the word "State" in clause (5) of this article should be replaced by the word "Parliament". Further consideration of this matter was held over.

Paragraph 8 (Article 67): The committee was of opinion that for sub-clauses (a), (b), (c), and (d) of clause (2) of article 67, the following be substituted :

Letters, art, science and social services.

The committee was also of opinion that the number of members to be nominated by the President to the Council of States should be reduced to twelve and it was accordingly suggested that in sub-clause (a) of clause (1) of article 67 for the words "fifteen members" the words "twelve members" should be substituted.

The committee was also of opinion that the proviso to clause (1) of this article should be omitted.

Paragraph 11 (Article 131): As regards the mode of selection of Governors, the committee was of opinion that the Governors should be directly appointed by the President and that it was not necessary to provide for a panel of candidates for such appointment.

Paragraph 13 (Articles 212 to 214): The committee was of opinion that the reference to Rulers should be omitted from clause (1) of article 212.

The committee was also of opinion that as far as possible there should be no Centrally administered areas except for strategic or defence purposes. If there remain any such areas, they should be provided with the largest

measure of autonomy after ascertaining the wishes of the people therein. Further consideration of this paragraph was postponed till the next meeting of the committee.

2. The committee then adjourned till 11 A. M. on the 11th April, 1948.

April 11, 1948

Present : (1) The Hon'ble Pandit Jawaharlal Nehru (*Chairman*); (2) The Hon'ble Mr. Rafi Ahmad Kidwai; (3) The Hon'ble Shri Jairamdas Daulatram; (4) The Hon'ble Dr. B. R. Ambedkar; (5) The Hon'ble Pandit Govind Ballabh Pant; (6) Dr. B. Pattabhi Sitaramayya; (7) Shri Biswanath Das; (8) Shri P. Govinda Menon; (9) Diwan Chaman Lall; (10) Dr. P. K. Sen; (11) Shri C. M. Poonacha; (12) Shri Satyanarayan Sinha; (13) Dr. H. C. Mookherjee; (14) Acharya J. B. Kripalani; (15) Shri Shankarrao Deo; (16) Shri R. R. Diwakar; (17) Shri S. Nagappa; (18) Shri K. Santhanam; (19) Mr. Naziruddin Ahmad; (20) Shri K. M. Munshi; (21) Mr. B. H. Zaidi; (22) Shri T. T. Krishnamachari; (23) Shrimati G. Durgabai; (24) Pandit Thakurdas Bhargava; (25) Sir S. V. Ramamoorthy; (26) Shri Gokulbhai Bhatt; (27) Shri S. V. Krishnamoorthy Rao; (28) Shri Kishori Mohan Tripathi.

In attendance : (1) Sir B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary; (4) Shri K. V. Padmanabhan, Under Secretary.

1. The committee resumed consideration of the matters referred to in the letter of the Chairman of the Drafting Committee to the President of the Constituent Assembly of India, dated the 21st February, 1948.

Paragraph 13 : On a suggestion made by certain members, it was agreed that an alternative provision for the administration of the present Centrally administered areas should be made on the basis of the *ad hoc* committee's report for Delhi and Ajmer-Merwara including Panth Piploda and it should be left to the Constituent Assembly for decision which of the provisions should be retained in the Constitution for these two States. The committee was further of opinion that in any case the general provision contained in Part VII should apply to other States in Part II of the First Schedule.

Paragraph 14 (Article 226) : (a) The committee was of opinion that article 226 should be retained subject to the following modifications :

- (1) It should be provided in this article that the resolution to be passed by the Council of States must specify the period during which Parliament would have power to make laws with respect to the matters referred to in that article and such period must not exceed three years, but that it would be competent to extend this power for a further period of not more than three years at a time by a fresh resolution passed by the Council of States in like manner.
- (2) It should also be provided in this article that the resolution must

not be moved in the Council of States without prior consultation with the Governments of the States concerned.

(b) *Seventh Schedule—List III, Entry 7*: The committee accepted the recommendation of the Drafting Committee that all matters in respect of which parties are now governed by their personal law should be put in the Concurrent List. There was however a difference of opinion amongst the members of the committee as to whether succession to agricultural land should be in the Concurrent List and a large number of members favoured its inclusion in the State List. It was accordingly decided that this matter should be left for the decision of the Constituent Assembly.

(c) *Seventh Schedule—List III, Entry 35*: The committee did not agree with the recommendation of the Drafting Committee that the principles on which compensation was to be determined for property acquired or requisitioned should in all cases be in the Concurrent List. The committee by a majority decided that entry 35 should be omitted from List III of the Seventh Schedule and consequential changes should be made in entry 43 of List I and entry 9 of List II of that Schedule.

Paragraph 15 (Financial Provisions): The committee was of opinion that the provisions recommended by the Expert Committee on Financial Provisions should be shown as alternatives in the Draft Constitution where such provisions have not been accepted by the Drafting Committee.

Paragraph 16 (Services): After discussion the committee agreed that Chapter I relating to Services in Part XII of the Draft Constitution should be retained in its present form. The committee was however of opinion that Chapter II of the said part should be replaced by a general provision providing for the constitution of Public Service Commissions for the Union and for the States by Acts of the appropriate Legislatures and for the regulation of their functions by such Acts, and that it should be made clear in such general provisions that there might be more than one Public Service Commission with different functions for the Union or for any particular State.

The committee was also of opinion that the entry "State Public Service Commission" should be transferred from List II (State List) of the Seventh Schedule to List III (Concurrent List) of that Schedule.

In view of the change suggested by the committee in the mode of selection of Governors, namely, that the Governors should be nominated instead of being elected, the committee was of opinion that all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution.

Paragraph 17 (Election, franchise, etc.): The committee agreed to the suggestion of the Drafting Committee contained in this paragraph.

Paragraph 18 (Amendment of the Constitution): The committee agreed to the suggestion of the Drafting Committee contained in this paragraph but was of opinion that the reference to the method of choosing the

Governors should be omitted from clause (2) of article 304 in view of the suggestion of the committee that the Governors should be appointed directly by the President.

Paragraph 19 (Safeguards for minorities): The committee was of opinion that the provisions relating to adult franchise, joint electorates and reservation for minorities (articles 292, 294 and 305) should be made applicable to all elections to the Legislatures of all States including the States in Part III of the First Schedule.

Paragraph 20 (Linguistic Provinces): The committee was of opinion that a resolution should be moved in the Constituent Assembly at its next session for the appointment of a commission for the constitution of linguistic provinces, and the Constitutional Adviser was requested to draft the necessary resolution for the purpose for being placed before the Steering Committee

2. The committee then considered certain comments including those of the High Courts on the Draft Constitution and the amendments bearing thereon contained in Part II of the list circulated to the members of the committee.

Article 3: The committee agreed to the recommendation of the Drafting Committee for the substitution of a new proviso for the existing proviso to article 3.

Article 99: The committee was of opinion that the decision of the question as to the language to be used in Parliament should be left to the Constituent Assembly.

Article 103: The committee accepted the recommendation of the Drafting Committee that in Explanation II to clause (3) of article 103 after the words "judicial office" the words "not inferior to that of a district judge" should be inserted.

Article 109: The committee agreed to the correction of a printing error in this article as recommended by the Drafting Committee.

Article 111: The committee was of opinion that in sub-clause (a) of clause (1) of article 111, the words "twenty thousand rupees" should be retained, and did not agree to the recommendation of the Drafting Committee that they should be changed to "fifteen thousand rupees".

Article 115: The committee agreed to the drafting alteration recommended by the Drafting Committee in article 115.

Article 121: The committee was of opinion that the words "and the time to be allowed to advocates appearing before the court to make their submissions in respect thereof" should be omitted from sub-clause (b) of clause (1) of article 121.

Article 122: The committee agreed to the revised draft of article 122 as recommended by the Drafting Committee subject to the modification that in the proviso to clause (1) of that article for the word "direct" the words "by rule prescribe" should be substituted.

Article 132: The committee agreed to the drafting alteration recommended by the Drafting Committee in this article.

Article 149: The committee agreed to the amendment recommended in this article by the Drafting Committee.

Pandit Govind Ballabh Pant invited the attention of the committee to the proviso to clause (3) of article 149 under which the total number of members in the Legislative Assembly of a State could not be more than three hundred although it had been provided in that clause that the representation of each territorial constituency in the Legislative Assembly of a State would be on a scale of not more than one representative for every lakh of the population. He pointed out that in view of the limit imposed by the proviso, the United Provinces with a population of sixty millions could not have more than three hundred members in the Legislative Assembly and that this would be quite unjust and unfair, for a House of only three hundred members would be unrepresentative in character and composition and would fail to reflect faithfully the movements of public opinion in the Province and that it would be also physically impossible for any member to keep in personal touch with his voters on account of their large number. The committee was of opinion that clause (3) of this article should be revised so as to provide that where the total population of a State exceeds thirty millions there would be five additional above thirty millions and that the total number of members of the Assembly shall not in any case be more than four hundred and fifty.

Article 150: The committee agreed to the recommendation of the Drafting Committee that no special provision for representation of commerce and industry in the Legislative Councils of the States should be included in this article.

Article 175: The committee agreed to the amendment recommended by the Drafting Committee in this article with regard to the reservation by the Governors of Bills affecting the powers of the High Court for the consideration of the President.

Article 184: The committee was of the opinion that the decision of the question as to the language to be used in the Legislatures of the States should be left to the Constituent Assembly.

Article 193: The committee was of opinion that the power to fix any age higher than sixty years but not exceeding sixty-five years for the retirement of judges of the High Courts should be conferred on Parliament and not on the Legislatures of the States, and accordingly suggested that in clause (1) of article 193 for the words "sixty years or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State" the words "sixty years or such higher age not exceeding sixty-five years as may be fixed in this behalf by Parliament by law" should be substituted.

Article 196: The committee agreed to the recommendation of the

Drafting Committee that article 196 should be retained subject to the amendment suggested by the Drafting Committee. The committee also agreed with the view expressed by the Drafting Committee that the system of appointment of temporary and additional judges in High Courts should be discontinued by increasing, if necessary, the total number of permanent judges of such courts.

Article 197 and Part IV of the Second Schedule : The committee after discussion came to the conclusion that the salaries of the judges of the Supreme Court and of the High Courts should be as follows :

Chief Justice of the Supreme Court . . .	Rs. 5,000
Any other judge of the Supreme Court . . .	Rs. 4,000
Chief Justices of the High Courts . . .	Rs. 3,500
Any other judge of the High Court . . .	Rs. 3,000

The committee was of the view that the existing judges of the High Courts should continue to get the same salaries which they were drawing immediately before the commencement of the Constitution.

Articles 198 and 199 : The committee agreed to the recommendation of the Drafting Committee with respect to these two articles.

Article 202 : The committee agreed to the amendment recommended by the Drafting Committee in article 203.

Article 205 : The committee agreed to the revised draft of article 205 as recommended by the Drafting Committee subject to the modification that in the proviso to clause (1) of that article for the word "direct" the words "by rule prescribe" should be substituted.

New article 39-A : The committee agreed to the new article 39-A as recommended by the Drafting Committee for the separation of the judiciary from the executive in the public services of the States subject to the modification that the word "complete" occurring in line 4 of that new article should be omitted.

Chapter VIII, New articles 209-A, 209-B and 209-C : The committee agreed to the insertion of a new Chapter VIII between Chapters VII and IX in Part VI of the Draft as recommended by the Drafting Committee subject to the following modifications :

- (1) In clause (2) of the new article 209-A for the words "five years" the words "seven years" should be substituted.
- (2) Clause (3) of article 209-A should be omitted.
- (3) Clause (2) of article 209-C should be omitted.
- (4) For clauses (1) and (3) of article 209-C, a provision conferring power on Parliament to provide by law for the control of the High Courts over subordinate courts including the posting and promotion of, and the grant of leave to, district judges and persons belonging to the subordinate judicial service, whether civil or criminal, by the High Courts should be substituted.

3. The committee then adjourned *sine die*. It was however decided that

the committee should meet some time on 11-5-48 and notice of such meeting should be given to the members of the committee sufficiently in advance of that date. In the meantime the members of the Constituent Assembly should be requested to send in their amendments to the Constituent Assembly Secretariat within a specified date without prejudice to their right to propose any further amendments at a later stage and those amendments should be placed before the committee when it would next meet.

(IV) DRAFT CONSTITUTION OF INDIA
February 21, 1948 (*Reprint of Oct. 1948*)

*Letter from the Chairman of the Drafting Committee to the President of the
Constituent Assembly*

NEW DELHI,
October 26, 1948.

To

The Hon'ble the President of the
Constituent Assembly of India,
New Delhi.

DEAR SIR,

On the 21st February, 1948, I submitted to you the Draft of the new Constitution of India as settled by the Drafting Committee. I am now writing to inform you of the developments that have taken place since then and the action taken by the Drafting Committee thereon.

2. Immediately on the issue of the Draft Constitution copies were sent to each member of the Constituent Assembly with a covering letter in which members were requested to send on or before March 22, 1948, any suggestions or criticisms which they may have to offer relating to the provisions contained in the Draft Constitution. As a result of this invitation some suggestions and criticisms were received from members of the Constituent Assembly. The Secretariat of the Constituent Assembly also received from members of the public various suggestions for the amendment of the Draft Constitution. In accordance with your directions we met on 23rd, 24th and 27th March, 1948, to consider all these criticisms and suggestions. Subsequently, a Special Committee consisting mostly of the members of the Union Constitution Committee, the Provincial Constitution Committee and the Union Powers Committee was constituted by you to go through the various comments and suggestions received with the recommendations of the Drafting Committee thereon. The Special Committee met on the 10th and 11th April and made certain recommendations.

3. Since then the Secretariat of the Constituent Assembly have received further comments and suggestions from members of the Constituent

Assembly, Provincial Governments, Provincial Legislatures, Ministries of the Government of India, and also from the public. We, therefore, reassembled at your suggestion on the 18th October and examined all the comments and criticisms on the Draft Constitution so far received. We also further considered the recommendations made by the Special Committee. As a result of this examination the Drafting Committee has picked out some amendments which it would like to support and has also suggested certain others which the committee would like to recommend.

4. To facilitate reference to such amendments the Drafting Committee has decided to issue a reprint of the Draft Constitution* which will be circulated to members of the Constituent Assembly and which will be used when the Draft Constitution is placed before the Assembly for consideration. In this reprint of the Draft Constitution the amendments recommended for adoption by the Drafting Committee are shown in the second column opposite the clauses or the articles which they seek to amend.

5. In my last letter of the 21st February I have drawn your attention to certain departures made by the Drafting Committee from the decisions of the Constituent Assembly. They have been shown in the appropriate places in the Draft Constitution itself. As you are aware, the Constituent Assembly had appointed two committees to report on the Centrally Administered Areas and on the financial relations between the Centre and the Provinces. The reports of these committees were considered by the Drafting Committee. The Drafting Committee, however, did not agree with some of the recommendations of these committees and has made its own proposals. For facility of reference the proposals made by these committees, which have not been accepted by the Drafting Committee, have been shown as alternative provisions in Appendix II to the reprint.

6. I hope all this will be found to be helpful to the members of the Assembly.

Yours truly,
B. R. AMBEDKAR,
Chairman,
Drafting Committee.

*Not reproduced. The amendments recommended by the Drafting Committee have been shown under the heading "Decision of the Drafting Committee, October, 1948" under "Comments and Suggestions" on the relevant article.

PART TWO
INTRODUCTION OF DRAFT CONSTITUTION
IN THE ASSEMBLY

AMBEDKAR'S SPEECH MOVING THE DRAFT CONSTITUTION IN THE CONSTITUENT ASSEMBLY

November 4, 1948

[The Draft Constitution as settled by the Drafting Committee was introduced in the Constituent Assembly by B. R. Ambedkar, the Chairman of the Committee, on November 4, 1948. He moved for its consideration the same day, and in doing so drew attention to the important features of the Constitution and dealt with the criticisms levelled against it. His speech is reproduced below.]

AMBEDKAR'S SPEECH*

MR. PRESIDENT, SIR, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee was appointed by a resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935, should be followed. Except on points which are referred to in my letter of the 21st February 1948, in which I have referred to the departures made and alternatives suggested by the Drafting Committee, I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution as it has emerged from the Drafting Committee is a formidable document. It contains 315 articles and 8 schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution. It would be difficult for those who have not been through it to realize its salient and special features.

*C. A. Deb., Vol. VII, pp. 31-44.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more than sufficient time to express their reactions to the provisions contained in it. I dare say that some of them are based on misunderstanding and inadequate understanding of the articles. But there the criticisms are and they have to be answered.

For both these reasons it is necessary that on a motion for consideration I should draw your attention to the special features of the Constitution and also meet the criticisms that have been levelled against it.

Before I proceed to do so I would like to place on the table of the House reports of three committees appointed by the Constituent Assembly (1) Report of the Committee on Chief Commissioners' Provinces, (2) Report of the Expert Committee on Financial Relations between the Union and the States, and (3) Report of the Advisory Committee on Tribal Areas, which came too late to be considered by the Assembly though copies have been circulated to Members of the Assembly. As these reports and the recommendations made therein have been considered by the Drafting Committee it is only proper that the House should formally be placed in possession of them.

To turn to the main question. A student of constitutional law, if a copy of a constitution is placed in his hands, is sure to ask two questions. Firstly, what is the form of government that is envisaged in the constitution; and secondly, what is the form of the constitution? For these are the two crucial matters which every constitution has to deal with. I will begin with the first of the two questions.

In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form of government prevalent in America and the form of government proposed under the Draft Constitution. The American form of government is called the Presidential system of government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the chief head of the executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two.

The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so, so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature, so that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognize this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions : (1) it must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive, being independent of Parliament, tends to be less responsible to the Legislature while a Parliamentary Executive, being more dependent upon a majority in Parliament, becomes more responsible. The Parliamentary system differs from a non-Parliamentary system inasmuch as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the Executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, resolutions, no-confidence motions, adjournment motions and debates on addresses. Periodic assessment is done by the electorate at the time of the

election which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is, it is felt, far far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability.

So far I have explained the form of government under the Draft Constitution. I will now turn to the other question, namely, the form of the Constitution.

Two principal forms of the constitution are known to history—one is called unitary and the other federal. The two essential characteristics of a unitary constitution are : (1) the supremacy of the central polity and (2) the absence of subsidiary sovereign polities. Contrariwise, a federal constitution is marked (1) by the existence of a central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words, Federation means the establishment of a dual polity. The Draft Constitution is a federal constitution inasmuch as it establishes what may be called a dual polity. This dual polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. This dual polity resembles the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States which correspond respectively to the Union Government and the State Governments of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the American Constitutions come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two.

The points of difference between the American Federation and the Indian Federation are mainly two. In the United States of America this dual polity is followed by a dual citizenship. In the U.S.A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rigours of this double citizenship are much assuaged by the Fourteenth Amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Anderson, in certain political matters, including the right to vote and to hold public office, States may and do discriminate in favour of their own citizens. This favouritism goes even farther in many cases. Thus to obtain employment in the service of a State or local Government one is in most places required to be a local resident or citizen. Similarly in the licensing of persons for

the practice of such public professions as law and medicine, residence or citizenship in the State is frequently required; and in business where public regulation must necessarily be strict, as in the sale of liquor, and of stocks and bonds, similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish in a sense belong to the State. It is customary for the States to charge higher hunting and fishing licence fees to non-residents than to its own citizens. The States also charge non-residents higher tuition fees in State colleges and universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may and does legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed on residents. These advantages, given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the State. The transient and the temporary sojourner is everywhere under some special handicaps.

The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

The dual polity of the proposed Indian Constitution differs from the dual polity of the U.S.A. in another respect. In the U.S.A. the constitutions of the Federal and the State Governments are loosely connected. In describing the relationship between the Federal and State Government in the U.S.A. Bryce has said :

The Central or National Government and the State Government may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other.

Distinct they are, but how distinct are the State Governments in the U.S.A. from the Federal Government? Some idea of this distinctness may be obtained from the following facts :

1. Subject to the maintenance of the republican form of government, each State in America is free to make its own constitution.
2. The people of a State retain for ever in their hands, altogether independent of the National Government, the power of altering their constitution.

To put it again in the words of Bryce :

A State (in America) exists as a commonwealth by virtue of its own Constitution, and all State authorities, legislative, executive and judicial are the creatures of, and subject to, the Constitution.

This is not true of the proposed Indian Constitution. No States (at any rate

those in Part I) have a right to frame its own constitution. The Constitution of the Union and of the States is a single frame from which neither can get out and within which they must work.

So far I have drawn attention to the differences between the American Federation and the proposed Indian Federation. But there are some other special features of the proposed Indian Federation which mark it off not only from the American Federation but from all other federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorized to do under the provisions of article 275, the whole scene can become transformed and the State becomes a unitary State. The Union under the Proclamation can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge, (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution and all other federations we know of.

This is not the only difference between the proposed Indian Federation and other federations. Federalism is described as a weak if not an effete form of government. There are two weaknesses from which federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in federalism, there can be no dispute. A federal constitution cannot but be a written constitution and a written constitution must necessarily be a rigid constitution. A federal constitution means division of sovereignty by no less a sanction than that of the law of the constitution between the federal Government and the States, with two necessary consequences: (1) that any invasion by the federal Government in the field assigned to the States and *vice versa* is a breach of the constitution and (2) such breach is a justiciable matter to be determined by the judiciary only. This being the nature of federalism, a federal constitution cannot escape the charge of legalism. These faults of a federal constitution have been found in a pronounced form in the Constitution of the United States of America.

Countries which have adopted federalism at a later date have attempted to reduce the disadvantages following from the rigidity and legalism which are inherent therein. The example of Australia may well be referred to

in this matter. The Australian Constitution has adopted the following means to make its federation less rigid:

(1) By conferring upon the Parliament of the Commonwealth large powers of concurrent legislation and few powers of exclusive legislation.

(2) By making some of the articles of the Constitution of a temporary duration to remain in force only "until Parliament otherwise provides".

It is obvious that under the Australian Constitution, the Australian Parliament can do many things, which are not within the competence of the American Congress and for doing which the American Government will have to resort to the Supreme Court and depend upon its ability, ingenuity and willingness to invent a doctrine to justify the exercise of authority.

In assuaging the rigour of rigidity and legalism the Draft Constitution follows the Australian plan on a far more extensive scale than has been done in Australia. Like the Australian Constitution, it has a long list of subjects for concurrent powers of legislation. Under the Australian Constitution, concurrent subjects are 39. Under the Draft Constitution they are 37. Following the Australian Constitution there are as many as six articles in the Draft Constitution, where the provisions are of a temporary duration and which could be replaced by Parliament at any time by provisions suitable for the occasion. The biggest advance made by the Draft Constitution over the Australian Constitution is in the matter of exclusive powers of legislation vested in Parliament. While the exclusive authority of the Australian Parliament to legislate extends only to about three matters, the authority of the Indian Parliament as proposed in the Draft Constitution will extend to 91 matters. In this way the Draft Constitution has secured the greatest possible elasticity in its federalism which is supposed to be rigid by nature.

It is not enough to say that the Draft Constitution follows the Australian Constitution or follows it on a more extensive scale. What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere.

First is the power given to Parliament to legislate on exclusively provincial subjects in normal times. I refer to articles 226, 227 and 229. Under article 226 Parliament can legislate when a subject becomes a matter of national concern as distinguished from purely provincial concern, though the subject is in the State List, provided a resolution is passed by the Upper Chamber by two-thirds majority in favour of such exercise of the power by the Centre. Article 227 gives a similar power to Parliament in a national emergency. Under article 229 Parliament can exercise the same power if Provinces consent to such exercise. Though the last provision also exists in the Australian Constitution the first two are a special feature of the Draft Constitution.

The second means adopted to avoid rigidity and legalism is the provision

for facility with which the Constitution could be amended. The provisions of the Constitution relating to the amendment of the Constitution divide the articles of the Constitution into two groups. In the one group are placed articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the courts. All other articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely, a majority of not less than two-thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these articles does not require ratification by the States. It is only in those articles which are placed in group one that an additional safeguard of ratification by the States is introduced.

One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation, being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities, is bound to produce diversity in laws, in administration and in judicial protection. Up to a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal states. One has only to imagine twenty different laws—if we have twenty States in the Union—of marriage, of divorce, of inheritance of property, of family relations, of contracts, of torts, of crimes, of weights and measures, of bills and cheques, of banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerable to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have a federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three :

- (1) a single judiciary;
- (2) uniformity in fundamental laws, civil and criminal; and
- (3) a common all-India civil service to man important posts.

A dual judiciary, duality of legal codes and a duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in a federation. In the U.S.A. the Federal judiciary and the State judiciary are separate and independent of each other. The Indian Federation though

a dual polity has no dual judiciary at all. The High Courts and the Supreme Court form one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedures. Canada is the only country which furnishes a close parallel. The Australian system is only an approximation.

Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great codes of civil and criminal laws, such as the Civil Procedure Code, the Penal Code, the Criminal Procedure Code, the Evidence Act, the Transfer of Property Act, laws of marriage, divorce, and inheritance, are placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

The dual polity which is inherent in a federal system, as I said, is followed in all federations by a dual service. In all federations there is a federal civil service and a state civil service. The Indian Federation though dual polity will have a dual service but with one exception. It is recognized that in every country there are certain posts in its administrative set-up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past a system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own civil services, there shall be an All-India Service recruited on an all-India basis with common qualifications, with uniform scales of pay, and the members of which alone could be appointed to these strategic posts throughout the Union.

Such are the special features of the proposed Federation. I will now turn to what the critics have had to say about it.

It is said that there is nothing new in the Draft Constitution; that about half of it has been copied from the Government of India Act of 1935; and that the rest of it has been borrowed from the constitutions of other countries, that very little of it can claim originality.

One likes to ask whether there can be anything new in a constitution framed at this hour in the history of the world. More than a hundred years have rolled over when the first written constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a constitution should be has long been settled. Similarly what are the fundamentals of a constitution are recognized all over the world. Given these facts, all constitutions in their main provisions must look similar. The only new things, if there can be any, in a constitution framed so

late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the constitutions of other countries is based, I am sure, on an inadequate study of the Constitution. I have shown what is new in the Draft Constitution and I am sure that those who have studied other constitutions and who are prepared to consider the matter dispassionately will agree that the Drafting Committee in performing its duty has not been guilty of such blind and slavish imitation as it is represented to be.

As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity which justifies their inclusion. Grote, the historian of Greece, has said :

The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of a government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendancy for themselves.

By constitutional morality Grote meant—

a paramount reverence for the forms of the constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action, subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the constitution will not be less sacred in the eyes of his opponents than in his own. (*Hear, hear.*)

While everybody recognizes the necessity of the diffusion of constitutional morality for the peaceful working of a democratic constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the constitution. The form of the administration must be appropriate to and in the same sense as the form of the constitution. The other is that it is perfectly possible to pervert the constitution, without changing its form, by merely changing the form of the administration and to make it inconsistent with and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with constitutional morality such as the one described by Grote the historian, that one can take the risk of omitting from the constitution details of administration and leaving it for the legislature to prescribe them. The question is : can

we presume such a diffusion of constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution.

Another criticism against the Draft Constitution is that no part of it represents the ancient polity of India. It is said that the new Constitution should have been drafted on the ancient Hindu model of a state and that instead of incorporating western theories the new Constitution should have been raised and built upon village panchayats and district panchayats. There are others who have taken a more extreme view. They do not want any central or provincial governments. They just want India to contain so many village governments. The love of the intellectual Indians for the village community is of course infinite if not pathetic. (*Laughter*). It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities, each one forming a separate little state in itself, has, according to Metcalfe, contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of freedom and independence. No doubt the village communities have lasted where nothing else lasts.

But those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country; and why? Their part in the destiny of the country has been well described by Metcalfe himself who says:

Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hindoo, Pathan, Mogul, Maratha, Sikh, English are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. A hostile army passes through the country. The village communities collect their little cattle within their walls, and let the enemy pass unprovoked.

Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded

the village and adopted the individual as its unit.

The Draft Constitution is also criticized because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge some day into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this two-fold purpose. To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson: "Ask for any safeguard you like for the Protestant minority but let us have a United Ireland," Carson's reply was: "Damn your safeguards, we don't want to be ruled by you". No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.

The most criticized part of the Draft Constitution is that which relates to fundamental rights. It is said that article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics fundamental rights are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and on the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction

between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in article 13 of the Draft Constitution. In *Gillow v. New York* in which the issue was the Constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said :

It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.

It is therefore wrong to say that the fundamental rights in America are absolute while those in the Draft Constitution are not.

It is argued that if any fundamental rights require qualification, it is for the Constitution itself to qualify them as is done in the Constitution of the United States and where it does not do so it should be left to be determined by the judiciary upon a consideration of all the relevant considerations. All this, I am sorry to say, is a complete misrepresentation if not a misunderstanding of the American Constitution. The American Constitution does nothing of the kind. Except in one matter, namely, the right of assembly, the American Constitution does not itself impose any limitations upon the fundamental rights guaranteed to the American citizens. Nor is it correct to say that the American Constitution leaves it to the judiciary to impose limitations on fundamental rights. The right to impose limitations belongs to the Congress. The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation ; the Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every State has inherent in it police

power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, invite to crime or disturb the public peace, is not open to question...

What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.

In the Draft Constitution the fundamental rights are followed by what are called "Directive Principles". It is a novel feature in a constitution framed for Parliamentary democracy. The only other constitution framed for Parliamentary democracy which embodies such principles is that of the Irish Free State. These directive principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words.

If it is said that the directive principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The directive principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called directive principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to instal any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy.

But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these Instruments of Instructions which are called "Directive Principles". He cannot ignore them. He may not have to answer for their breach in a court of law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.

That it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgment their proper place is in Schedules III-A and IV which contain the Instrument of Instructions to the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as to how they should exercise their powers. But that is only a matter of arrangement.

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in the modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution, has outgrown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight.

The Draft Constitution is criticized for having one sort of constitutional relations between the Centre and the Provinces and another sort of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those which come under Defence, Foreign Affairs and Communications. They are not bound to accept subjects included in the Concurrent List. They are not bound to accept the State List contained in the Draft Constitution. They are free to create their own Constituent Assemblies and to frame their own constitutions. All this, of course, is very unfortunate and, I submit, quite indefensible. This disparity may even prove dangerous to the efficiency of the State. So long as the disparity exists, the Centre's authority over all-India matters may lose its efficacy. For power is no power if it cannot be exercised in all cases and in all places.

In a situation such as may be created by war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy. What is worse is that the Indian States under the Draft Constitution are permitted to maintain their own armies. I regard this as a most retrograde and harmful provision which may lead to the break-up of the unity of India and the overthrow of the Central Government. The Drafting Committee, if I am not misrepresenting its mind, was not at all happy over this matter. They wished very much that there was uniformity between the Provinces and the Indian States in their constitutional relationship with the Centre. Unfortunately, they could do nothing to improve matters. They were bound by the decisions of the Constituent Assembly, and the Constituent Assembly in its turn was bound by the agreement arrived at between the two negotiating committees.

But we may take courage from what happened in Germany. The German Empire as founded by Bismark in 1870 was a composite State, consisting of 25 units. Of these 25 units, 22 were monarchical States and 3 were republican city States. This distinction, as we all know, disappeared in course of time and Germany became one land with one people living under one Constitution. The process of the amalgamation of the Indian States is going to be much quicker than it has been in Germany. On the 15th August 1947 we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken them as centrally administered areas, there have remained some 20 or 30 States as viable States. This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate constitution, and they will lose nothing that is of value to them. I feel hopeful that my appeal will not go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States.

Some critics have taken objection to the description of India in article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is federal, does no violence to usage. But what is important is that the use of the word "Union" is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a Federation, the Federation was not the result of an agreement by the States to join in a

Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

The provisions relating to amendment of the Constitution have come in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The powers of amendment are left with the Legislatures, Central and Provincial. It is only for amendments—of specific matters and they are only a few—that the ratification of the State Legislatures is required. All other articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simpler method of amending the Constitution.

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the articles of the Constitution it has no eye on getting through a particular measure. If the future Parliament met as a Constituent Assembly, its members will be acting as partisans seeking to carry out amendments to the Constitution to facilitate the passing of party measures

which they have failed to get through Parliament by reason of some article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

I believe I have dealt with all the adverse criticisms that have been levelled against the Draft Constitution as settled by the Drafting Committee. I do not think that I have left out any important comment or criticism that has been made during the last eight months during which the Constitution has been before the public. It is for the Constituent Assembly to decide whether they will accept the Constitution as settled by the Drafting Committee or whether they shall alter it before passing it.

But this I would like to say, the Constitution has been discussed in some of the Provincial Assemblies of India. It was discussed in Bombay, the Central Provinces, West Bengal, Bihar, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions of the Constitution and in Madras to article 226. But excepting this, in no Provincial Assembly was any serious objection taken to the articles of the Constitution. No constitution is perfect and the Drafting Committee itself is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the Constitution as settled by the Drafting Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile. Sir, I move.

PART THREE
LINGUISTIC PROVINCES COMMISSION



REPORT OF THE LINGUISTIC PROVINCES COMMISSION

December 10, 1948

[Ever since 1921, the Indian National Congress had given expression to its opinion in favour of the creation in British India of administrative units based on linguistic homogeneity: and as early as 1928 the Nehru report emphasized the desirability of creating linguistic provinces. This principle was subsequently officially adopted by the Congress and included in its election manifesto. On November 27, 1947, in the Constituent Assembly (Legislative) Prime Minister Nehru on behalf of the Government of India accepted the principle underlying the demand for linguistic provinces.]

Subsequently the Government of India made a statement that Andhra could be mentioned as a separate unit in the new Constitution, as was done in the case of Sind and Orissa by the Government of India Act, 1935. The Drafting Committee which went into this matter felt however that the bare mention of Andhra as a separate State in the Schedule to the Constitution would not suffice to bring it into being from the commencement of the new Constitution. Preparatory steps would have to be taken immediately under the Government of India Act, 1935, as in force in the Dominion of India, in order that the new State, with all the machinery of Government, might be in being from the commencement of the new Constitution. The Drafting Committee recommended that a Commission should be appointed to enquire into and work out all relevant matters not only as regards Andhra but also as regards other linguistic regions, with instructions to submit its report in time to enable any new States whose formation it might recommend to be created under section 290 of the Act of 1935 and to be mentioned in the Constitution before it was finally adopted. In pursuance of this recommendation, the President appointed the Linguistic Provinces Commission on June 17, 1948, consisting of S. K. Dar, retired Judge, Allahabad High Court, Pannalal, a retired member of the Indian Civil Service, and Jagat Narain Lal, a member of the Constituent Assembly. This Commission was directed to examine and report on the formation of new Provinces of Andhra, Kerala, Karnataka and Maharashtra. The Commission submitted its report on December 10, 1948. The text of the report is reproduced below.]

TEXT OF THE REPORT

To

The Hon'ble the President,
Constituent Assembly of India,
New Delhi.

SIR,

We, the Commissioners appointed for the purpose of inquiring into and reporting on the desirability or otherwise of the creation of the proposed Provinces of Andhra, Karnataka, Kerala and Maharashtra, and fixing their boundaries and assessing the financial, economic, administrative and other consequences in those Provinces and in the adjoining territories of India, beg to submit the following Report. It will be seen that our Report is unanimous and without a dissenting minute.

Introduction

2. By a notification dated June 17, 1948, we were appointed to report on the question of formation of the Provinces of Andhra, Kerala, Karnataka and Maharashtra; the financial, economic, administrative and other consequences thereof; and their approximate boundaries. The recommendation made by the Drafting Committee of the Constitution which led to our appointment, and our terms of reference are reproduced in Appendix I.

2A. Our first meeting was held on July 19, 1948, at Council House, New Delhi, when a questionnaire was settled and issued to the public. This is reproduced in Appendix II. During the last week of August a few witnesses were examined by us in New Delhi and in the beginning of September we started on a tour lasting twenty-six days, in which a large number of witnesses were examined at Vizagapatam, Madras, Madura, Mangalore, Calicut and Coimbatore. This was followed by another tour in the last week of October lasting over a fortnight in which also a very large number of witnesses were examined at Nagpur, Hubli, Poona and Bombay. Altogether about 1,000 written memoranda were received and the oral evidence of over 700 witnesses was recorded during the inquiry. The last meeting of the Commission, in which all the Associate members were also present for final consultation, was held in Council House, New Delhi, on November 20 and 21. This report was signed on 10th December, 1948.

3. The inquiry thus made was a highly controversial one. On all the important issues, which required consideration, there were two sides and on some issues more than two. Yet there was no agreed presentation of the case even on behalf of any particular side and the individual variations in the case of each side unnecessarily lengthened the work and made it perplexing. There was this additional disadvantage that the Provincial

Governments, who usually furnish disinterested and independent evidence in such inquiries, being, as at present constituted, composite Governments drawn from all parties to the controversy, decided to remain neutral and did not offer their usual co-operation. Nevertheless sufficient material came before us to enable us to form a definite opinion upon the essential merits of the controversy.

Chapter I

THE LINGUISTIC PROVINCES

4. The existing Provinces of Madras, Bombay, Central Provinces and Berar, and the Indian States of Hyderabad, Travancore, Cochin, Mysore and Kolhapur have within their borders extensive areas, in which a large majority of the people speak Tamil, Telugu, Malayalam, Kannada, Marathi, Gujarati or Hindi languages. These ancient languages are endowed with rich literature and the persons who speak them possess certain social or cultural characteristics, which distinguish them from their neighbours who do not speak their language. At one time, in the more or less distant past, the areas in which these languages were spoken bore other names and also formed sovereign States. Thus Andhra, Kerala, Karnataka, Maharashtra, Tamil-Nad and Gujarat are the ancient names of the areas and States in which Telugu, Malayalam, Kannada, Marathi, Tamil and Gujarati languages were respectively spoken. Vidarbha is the ancient name for modern Berar. But the geographical boundaries of these linguistic areas have not remained constant and history has recorded many changes in them. And these ancient names can now be applied only in a general way to the homelands of the people who spoke these languages or to areas now existing in which these languages are largely spoken.

5. The formation and growth of the existing provinces of India is a part of the general history of the rise to power of British dominion in this country. From small beginnings in the coastal towns of Calcutta, Bombay and Madras, the British rule went on expanding and adding territory after territory, which were transformed into administrative provinces without any rational or scientific planning. The provinces thus formed have resulted in bringing together under one administration people speaking different languages and occasionally they have also separated people speaking one language under different administrations. Yet these heterogeneous provinces have played an important part in building up Indian unity and in bringing together diverse elements to work in common, which but for them would have remained apart.

6. The British policy of integrating India underwent a change soon after the beginning of this century. For one reason or another thereafter the disintegration of provinces was taken in hand and the North-West Frontier

Province, Assam, Bihar, Sind and Orissa were successively carved out from the older provinces of which they formed parts. And both the Montford Report and Simon Report are at one in condemning the existing provinces and in advocating their reformation on a linguistic basis.

7. The demand for linguistic provinces has an early association with the struggle for Indian independence. Since 1921 the Congress has discarded British administrative provinces for its work and has created provinces, many of which are more or less linguistic, though not all, *e.g.*, Maharashtra, Vidarbha, Bombay, Ajmer, etc. In 1928 the Nehru Report fully endorsed the Congress view and strongly emphasized the desirability of creating these linguistic provinces. And since then the Congress has included in its election manifesto the formation of linguistic provinces as one item of its programme and various Congress Legislatures have passed resolutions in support of the demand. And lastly on November 27, 1947, in the Constituent Assembly the Prime Minister on behalf of the Government accepted the principle underlying the demand for linguistic provinces.

8. But these pledges can only be redeemed in the set-up of new circumstances which at present exist in this country. Indian nationalism is yet in its infancy. India has, in the words of its Prime Minister, just survived a major operation. It is in the midst of an undeclared war with Pakistan. It has still to settle its refugee problem and the problem of feeding its teeming millions and as a result of British withdrawal it is working and must work for some time to come with a depleted and over-strained administration. And, as if these anxieties were not sufficient, India is about to experiment under the new Constitution with autonomous States and adult franchise without the cementing force of a national language to take the place of English.

9. The evidence given before us is largely influenced by all or some of the considerations stated above. There is a general recognition that India should have a strong Centre and a national language. The evidence largely preponderates in favour of the view that the residuary powers must vest in the Centre, which must possess overriding powers as well. On the question of national language the evidence is somewhat divided. The minority favours the retention of English or making Hindi take the place which English now occupies; the majority, however, favours the mother-tongue being made the regional language with Hindi as a second language for inter-provincial purposes and English as a third language for foreign business and intercourse.

10. It is generally recognized that before any linguistic area can claim to be formed into a province it must satisfy certain tests and conditions and failure to comply with them would be a good ground for refusing the demand. The area needs to be geographically contiguous and it cannot be formed into a province with pockets and corridors of other languages intervening. Likewise it has to be financially self-supporting so as not to

be a drag on the Centre for its subsistence. It should also be administratively convenient and should possess within itself capacity for future development. And within its own borders and amongst the people speaking the same language there must be a large measure of agreement in regard to the formation of the new province. And a new province cannot be forced by a majority upon a substantial minority of people speaking the same language.

11. Subject to the remarks made above the evidence given before us brings out two sharply conflicting views in regard to the formation of these linguistic provinces and the time and circumstances in which they should be formed.

12. The case for the formation of linguistic provinces rests upon two alternative grounds: upon the theory that these linguistic groups are sub-nations and as such contracting parties to the Constitution from which the Federation and the Centre derive their existence and power; alternatively it rests upon the unwieldy size of the existing provinces, their heterogeneous composition, and the administrative advantage which may result from bringing together people speaking one language, in imparting education and in the working of courts, legislatures, governmental machinery and democratic institutions.

13. The case against the formation of these linguistic provinces rests upon the intolerance which they breed against the minority speaking a different language in the same province, the inter-provincial isolation and antagonism which they bring into existence, the parochial patriotism which they emphasize as against the growth of the nascent national feeling and lastly the bitterness which is likely to be generated as a result of marking off the boundaries of these provinces between rival claimants and the allotment of the capital cities of Madras and Bombay.

14. The arguments in favour of the immediate formation of linguistic provinces are that on account of Congress pledges the demand has got deep down into the masses and its postponement is creating bitterness, impatience and frustration and the country cannot settle down to constructive work till the demand is conceded, and that the Constitution will start on a faulty basis without the linguistic provinces being put in its Schedule.

15. The arguments in favour of its postponement are that the country is not yet free from the dangers of external aggression, that it is in the grip of an economic crisis of great magnitude, that Indian States have not yet been properly integrated, that the Government is preoccupied with more urgent problems, that the country cannot at this moment bear the financial and administrative strain which these new provinces will put upon it, and that it does not possess the necessary peaceful atmosphere in which new provinces can be scientifically and properly planned and a new map of India rationally drawn up.

Chapter II

THE LINGUISTIC AREAS AND THEIR BOUNDARIES

ANDHRA

16. The geographically contiguous area, which is claimed as Andhra Desh and in which Telugu is alleged to be largely spoken, is a long and wide stretch of country bounded on the east by the Bay of Bengal, on the west by Hyderabad and Mysore States, on the north by Central Provinces and Orissa and on the south by the Tamil portion of Madras called Tamil-Nad. It comprises eight districts of Hyderabad, one district and one town of Mysore, eleven districts of North Madras, the city of Madras and portions of three districts of South Madras or Tamil-Nad, and portions of two districts of Central Provinces, and one entire district and a portion of another district of Orissa. But this Andhra Province can only be and is a distant ideal as it is generally conceded that the breaking up of Indian States or their territory for the present is not a matter of practical politics.

17. The Andhra, which is claimed as capable of immediate realization, comprises eleven districts of north Madras, (1) Vizagapatam, (2) East Godavari, (3) West Godavari, (4) Kistna, (5) Guntur, (6) Bellary, (7) Anantpur, (8) Cuddapah, (9) Kurnool, (10) Nellore, and (11) Chittoor, with the city of Madras, and portions of the three Tamil districts of Chingleput, North Arcot and Salem in south Madras and with the southern portions of Chanda and Bastar in C. P. and with Koraput district and a portion of Ganjam district in Orissa on the north. This includes roughly an area of 86,000 square miles and population of 20 millions, but it excludes about 10 million Telugus living in Hyderabad and Mysore States and 4 to 5 millions in Tamil-Nad.

18. The eleven districts of North Madras, which would go to form the proposed Andhra Province, are divided into two groups of five districts each, called Coastal districts and Rayalaseema, with the eleventh district of Nellore, more allied to Rayalaseema but partaking of the characteristics of both the groups. The five Coastal districts, also called Delta districts *viz.*, Vizagapatam, East Godavari, West Godavari, Kistna and Guntur, are economically, educationally and politically more advanced. They are the surplus districts of the Province in food-grains. They contain the only University and Medical College of Telugu people and all important political thought and leadership of the Telugus emanate from this centre. The Rayalaseema, which comprises the four Ceded districts of Bellary, Anantpur, Cuddapah and Kurnool, and Chittoor are backward districts with undeveloped natural resources and often harassed by famine. They are also largely bilingual districts under the influence of Kannada and Hindustani on the border of Mysore and Hyderabad and Tamil on the

borders of Tamil-Nad. In manners, customs, traditions and general outlook on life also the two groups differ and, in a general way, though in a less intensified form, the distrust and apprehension of domination and exploitation which exist in a Telugu mind against the Tamil, find their counterpart in the Rayalaseema mind against the Coastal districts.

19. In order to secure the cooperation of Rayalaseema in the formation of the proposed Province of Andhra an agreement was made between Rayalaseema and the Ceded districts by which certain concessions were made to Rayalaseema in regard to its development, its voting strength in the Legislature and facilities for university education. This agreement, which is dated November 16, 1937, is popularly known as Sri Bagh Pact and is reproduced in Appendix III. According to this agreement Rayalaseema has a right to demand equal seats in the Legislature, to secure priority for its irrigational schemes and to have the choice of locating the High Court or the capital within its borders and to have a university centre at Anantpur. Eleven years have passed since this pact was signed, but the differences between the Coastal districts and Rayalaseema still remain unbridged and the pact still stands as a witness to these differences and to the failure to settle them.

20. A great deal of controversy exists as to the present attitude of Rayalaseema in regard to the formation of the proposed Andhra Province. A statement was produced before us signed by twenty out of twenty-five Rayalaseema M.L.As. in which the demand for a separate Province was opposed as being wholly misconceived and inopportune and its acceptance, if unavoidable, was made conditional upon the literal enforcement of the Sri Bagh Pact. Three of these signatories later on appeared before us, withdrew their uncompromising opposition and showed willingness to accept the demand if made conditional upon the enforcement of the Pact.

21. There can be no doubt that one section of Rayalaseema opinion is definitely opposed to the formation of the proposed Andhra Province. The Rayalaseema districts being mostly bilingual, this section does not want these to be broken up into Kannada, Tamil and Telugu areas. Rayalaseema being close to Madras it does not want to be cut away from that city. Rayalaseema being educationally, politically and economically backward, it apprehends coastal domination and exploitation in services, legislatures, and in developmental schemes. And altogether it sees a better chance for the future development of Rayalaseema in an undivided Madras than in a divided Madras after the separation of Andhra, Kerala, etc.

22. Equally clearly another section of Rayalaseema opinion is willing to throw in its lot with the Coastal districts in forming the new Province; it is prepared to take the risk even if the Sri Bagh Pact is not enforced. It considers its power will be more effective in a smaller and divided Province than in a larger and undivided one.

23. We are not in a position to judge the relative strength of these opinions, nor is it necessary to do so. It must, however, be accepted that in 1937, when the Sri Bagh Pact was made, Rayalaseema was not willing to form a separate Andhra Province except on certain terms and conditions incorporated in the Pact. It was conceded before us by the leaders of the Coastal districts that the Sri Bagh Pact still stood and that they were prepared to honour it and to give it statutory force. It follows, therefore, that if for any reason a statutory guarantee cannot be given to Rayalaseema in regard to the Pact, the consent of Rayalaseema in regard to the formation of the new province would remain wanting.

24. One section has asked us to hold on the evidence given before us that, even if the Pact cannot be enforced, Rayalaseema is willing to trust the Coastal districts and is prepared to form the Province without the Pact. But we find ourselves unable to do so, because this controversy in our opinion can only be set at rest by a plebiscite or by an election issue and cannot be satisfactorily determined by a tribunal upon statements made before it by a few witnesses of each side.

25. Some of the Coastal leaders have asked us to recommend that Government might bring about reconciliation between the two groups so that the new Province could be formed by consent. The terms of the Pact cannot be fitted into the Draft Constitution and are unlikely to be enforceable under any new constitution which we can foresee. What steps the Government can take to bring about the compromise we do not know. We ourselves tried to effect a compromise but failed. It is possible that the Government may succeed where we failed and we gladly bring the matter to their notice. But till such an agreement is reached, the conclusion is inevitable that a substantial section of Rayalaseema is opposed to the formation of Andhra Province and one essential condition for the creation of such a province is wanting.

26. It is also not quite easy to mark off the boundaries of the proposed Andhra Province. On the south, west and north some of its areas are claimed by Tamil-Nad, Karnataka and Orissa respectively, and Andhra, in its turn, claims in these directions certain areas from those claimants as also from the Central Provinces. These disputed areas are markedly bilingual and it is not an easy matter to break them into parts and to allot them to separate linguistic areas. First of all, the language and race statistics of these areas are not available beyond the census of 1931 and even in regard to the correctness of 1931 figures there is some justifiable controversy. Secondly, it will require extensive labour and investigation to locate those areas which are geographically contiguous and which, with due regard to administrative convenience, could be broken up and attached to any new province.

27. The Andhra-Orissa dispute on the north has a special feature of its own. It was once the subject of an inquiry by the Government and was

settled, but the settlement did not satisfy either party and the dispute still persists and is likely to continue.

28. The Province of Orissa, as it exists today, includes two districts of Ganjam and Koraput, which adjoin and are to the north of the Andhra district of Vizagapatam. These two districts at one time formed parts of Ganjam and Vizagapatam districts, respectively, of the Province of Madras and were border districts between old Orissa and Madras and were largely bilingual, having a large population of Oriyas and Telugus.

29. When the Government decided to form an independent Province of Orissa it also decided to separate Oriya and Telugu areas of old Ganjam and Vizagapatam districts and to bring the Oriya areas into Orissa and the Telugu areas into Madras, and for this purpose a Boundary Commission was appointed, which is known as O'Donnel Commission after the name of its President. On the basis of the Report of this Commission, with certain important modifications, the Orissa Order in Council of 1936 was made as a result of which very large portions of the old Ganjam district and the Agency tract of Vizagapatam district were transferred to Orissa and came to be known as Ganjam and Koraput districts of Orissa Province. The remaining portion of the old Ganjam district, which was not separated from Madras, is now incorporated in Vizagapatam district.

30. The Telugus now claim back from the Ganjam district of Orissa a coastal belt about forty miles long and ten to fifteen miles broad by the side of the Bay of Bengal, which includes the sea-coast towns of Gopalpur and Chatarpur and the inland town of Berhampur and the area shown as Berhampur B and Chatarpur B and south-eastern portion of Chikiti and Jarda Zamindari in O'Donnel's Report. They further claim the plains portion of the Parlakimedi Estate, including the town of Parlakimedi, and the entire Koraput district, which comprises the Jeypore impartible-estate and Pottangi taluk of O'Donnel's Report.

31. The Oriyas, on the other hand, claim back from the Telugus a small south-eastern corner of Berhampur B and Sompeta B and Tekkali taluk of O'Donnel's Report from the old Ganjam district, which are now included in Vizagapatam district, and portions of Palakonda, Parvatipur, Salur Viravalli, Srungavarpukota Agencies and portions of Gunipur (Kunrupam estate) and Padwa B (Hill Magdole estate) of O'Donnel's Report, which was formerly and even now included in the Agency portion of Vizagapatam district.

32. The Orissa claim against Andhra is not included in our terms of reference and the Andhra claim against Orissa, though covered by the reference, cannot be properly considered as the Orissa Government has not been associated with this inquiry and no Associate member from Orissa has worked with us. We are not in a position to check the truth of the charges of maltreatment, which the Telugu minority has levelled against Orissa, nor do we know what changes have come about in the

ratio of population and in administration in these two districts since they were separated from Madras in 1936. One thing, however, is certain that the Telugus who have been transferred to Orissa are very unhappy and their condition is the best illustration of the spirit of intolerance which linguistic provinces breed and of the danger which lurks behind them.

33. The Telugus also claim in the north some portions of Chanda and Bastar in the Central Provinces, the latter being also counter-claimed by Orissa and Maharashtra. In the south Tamil-Nad claims some taluks from the Chittoor district of Andhra, and the latter claims some taluks from Chingleput, North Arcot and Salem districts of Tamil-Nad. The southern boundary of Andhra affects the city of Madras and, if the southern line is drawn according to the Telugu claim, the city of Madras falls within the Telugu area and, if it is drawn according to Tamil claims, the city falls in Tamil area.

34. In the west of Andhra the boundary dispute is between Karnataka and Andhra in regard to the districts of Bellary, Anantpur and Kurnool. Many years ago Congress had given an award which is generally known as Kelkar's Award by which the three taluks of Adoni, Alur and Rayadrug of Bellary were allotted to Andhra and the remaining portion of the district of Bellary, including the town of Bellary, was allotted to Karnataka. But neither party is satisfied with the award and lays claim to the entire district or a greater portion of it. Karnataka also claims portions of Anantpur and Kurnool districts.

35. These disputes were presented before us with the idea that we might recommend them for determination by a Boundary Commission, which is contemplated in the terms of reference by which we were appointed. No attempt was made to place facts and figures before us upon which a satisfactory decision could be reached in regard to these disputed matters and within the time at our disposal it was not possible for us by our own independent investigation to come to any satisfactory finding, so that they must stand over for the present. But they clearly emphasize the difficulty which lies ahead in forming linguistic provinces, and the heat and controversy, which they will generate and the time and trouble which will be necessary for undertaking this work.

36. The eastern boundary of the proposed Province of Andhra is the Bay of Bengal. Its western boundary is in dispute and may be a line drawn through Bellary and Anantpur districts outskirting Mysore State till it touches the southern boundary of Andhra, which also is disputed, or may be a curved line starting from Pulicat Lake in the east or from the foot of Chingleput district and traversing through Chittoor, Chingleput, North Arcot and Salem districts. The northern boundary is also in dispute and may be the present boundary of Orissa and Central Provinces or it may be a line drawn from some point near Rishikulya River in Orissa up to the south of Indrawati in Central Provinces curving through portions of present

Ganjam and Koraput districts of Orissa and of Bastar and the Chanda districts of Central Provinces as the future Boundary Commission may decide.

KERALA

37. The geographically contiguous area in which Malayalam language is largely spoken is a narrow strip of country on the Western Coast of India lying between Cape Comorin on the south and North Kanara on the north and the Arabian Sea on the west and the Western Ghats on the east. And it comprises the Indian States of Travancore and Cochin and the Malabar district of Madras Province, Kasargod taluk of South Kanara district and Gudalur of Nilgiri district. It also includes the small French settlement of Mahe and two Union islands, Laccadive and Amindive, as also Anjengo, including Thankasseri on the Travancore Coast, now part of Tinnevely district. It roughly occupies an area of 21,000 sq. miles and is inhabited by 13 million people.

38. At one time there was a strong movement afoot to bring this area under one administrative province called United Kerala. Recently this movement has received a setback and it is not for us to say whether it is temporary or permanent. The movement undoubtedly represents the aspirations of a large number of Malayalam people, and if it cannot immediately fructify it is only because Travancore and Cochin States are not yet fully ready to join it. This has brought into existence another proposal for the formation of a smaller Kerala Province without Travancore, Cochin and Mahe, but with the Union areas stated above with the addition of Coorg, the Tulu taluks of South Kanara and the Ootacamund taluk of Nilgiris, west of the watershed of the Ghats. It is claimed that this Province roughly gives an area of 8,500 sq. miles with a population of four million and eight hundred thousand people.

39. As to the formation of this smaller Province there exist two opinions in Malabar. One opinion does not regard this Province as practicable and will wait till Travancore and Cochin are ready to join it. The other opinion favours the formation of an immediate smaller province to be expanded later on when Cochin and Travancore are ready to merge in it.

40. The larger Province of United Kerala is not immediately practicable on account of the want of consent of Travancore and Cochin States. Apart from the difficulty of uniting two viable autonomous Indian States with Union districts, the Travancore State is burdened with a Tamil problem in its southern territory, which may become troublesome in the event of the formation of a Malayalam linguistic Province. The process of unification of Kerala will, therefore, require both time and some difficult adjustment and must wait.

41. The smaller Province has not been sufficiently canvassed to elicit that

amount of public support which is necessary for the formation of a new province. Its advocates desire to bring it into existence not strictly on linguistic grounds but as a matter of administrative convenience. It is said that Malabar is an overpopulated district at the tail-end of Madras, deficit in foodgrains, neglected and undeveloped in the warring politics of Andhra and Tamil-Nad and unable to secure its rights or its development in the united Madras. It is claimed that a maritime Province between the Arabian Sea and the Ghats comprising the Union districts of Malabar, South Kanara, Coorg, Nilgiris, and portions of Coimbatore will be linguistically compact and culturally homogeneous and administratively convenient.

42. But such a Province does not fall within the ambit of a linguistic province, which we are required to consider. Coorg, South Kanara, Nilgiris and Coimbatore are hotly contested linguistic areas claimed by Karnataka and Tamil-Nad. And it is not possible in this inquiry to dispose of them on purely non-linguistic considerations. It is not disputed that the proposed area, standing by itself, cannot support a province on principles which are universally accepted, and that the question of formation of Kerala Province without Travancore and Cochin can only arise when Andhra or Karnataka or both are separated from Madras leaving Malabar attached to Tamil-Nad. Even then a one-district province is hardly a practicable proposition and must be rejected on financial and administrative grounds.

KARNATAKA

43. The present homeland of the Kannada language is Mysore State and the Union districts of Dharwar and Bijapur, where it is spoken by seventy to eighty per cent. of the people. But Kannada is also the majority language of two other Bombay districts, viz., North Kanara and Belgaum, and of one Madras district, viz., Bellary, where it is the language of 54·9, 64·6, and 55·0 per cent. of the people respectively. Kannada is also the majority language in some of the merged Deccan States, in some portion of Kolhapur State, in the small State of Sandur, and in some taluks or portions of taluks of two Union districts of Bombay, viz., Satara and Sholapur, and of six districts of Madras, namely, South Kanara, Nilgiris, Coimbatore, Anantpur, Salem and Kurnool, and of the small Province of Coorg, and lastly of three districts of Hyderabad State. The area specified above is sufficiently large and populous to make a well-sized province. But it is not an easy matter to make it.

44. Almost half the Kannada-speaking people live in Mysore State. More than half are to be found in Mysore, Sandur, Hyderabad, Kolhapur and the merged Deccan States and the Province of Coorg. And the remaining population, which is to be found in the Indian Union outside the autonomous State, is split up in the three Provinces of Bombay, Madras and Coorg. And the Madras districts of South Kanara and Bellary are separated by long

distances from each other and impassable rivers and mountains from the Kannada-speaking districts of Bombay.

45. If Mysore had been willing to join the Union it could easily have formed a nucleus round which the Kannada-speaking districts of Madras and Bombay could be brought together and reared into an administratively convenient Province. It would have also solved the problem of the small Province of Coorg, which has been carrying on a difficult and isolated existence and which is ready to merge in Mysore State but is not prepared to merge in Karnataka Province composed exclusively of Union areas. But the Mysore State does not appear to be yet ready to merge itself in Karnataka Province and we cannot say whether public opinion or Government policy is prepared to merge Union territory in the Indian States.

46. If a Karnataka Province is to be formed by piecing together Kannada-speaking merged Indian States and the Province of Coorg and the Kannada-speaking districts of Bombay and Madras it will have to face enormous difficulty. More than half the merged Deccan States are predominantly Maharashtrian. The districts of North Kanara and Belgaum in Bombay contain strong Maharashtrian minorities. In the South Kanara district of Madras Kannada is spoken only by 17·8 per cent. of the people and in Bellary district Telugu population is over thirty per cent. mostly concentrated in the taluks of Adoni, Alur and Raydrug.

47. South Kanara, Coorg and Nilgiris present difficult problems. In South Kanara the northern taluk Coondapur is predominantly Kannada and the southern taluk Kasargod is predominantly Malayalee. The middle taluks are Tulu-speaking, Tulu being the dialect of over forty per cent. people. In Coorg out of a total population of one lakh and sixty-three thousand (163,000), forty-four thousand, five hundred and eighty-five (44,585) are Coorgis and Nilgiris has a strong element of Badaga population. All these three areas are counter-claimed by Malayalees and one of these viz., Nilgiris, by Tamils also. And though it is true that Kannada is the court language of South Kanara and of Coorg it will not be an easy matter to divide these areas on a linguistic basis without taking into account the wishes of the Tulus, Coorgis and Badagas. These areas adjoin Mysore as also Malabar but their greatest affinity is with Mysore and it is not easy to say whether without Mysore they would like to merge in a Karnataka Province or not.

48. Confined to Union territory, in two districts of Bombay alone, viz., Dharwar and Bijapur, the Kannada language has got an absolute majority. In two other districts of Bombay, viz., North Kanara and Belgaum, and in one district of Madras, viz., Bellary, and the Province of Coorg it has only got a bare majority, while in the remaining districts of Bombay and Madras it can lay claim only to some taluks and small portions of some taluks. And the greatest difficulty in the matter is that it will not be administratively convenient to bring together under one administration Bellary and South Kanara districts or the Kannada portions of Coimbatore, Nilgiris and Salem

districts of Madras or these Madras districts and the Kannada-speaking districts of Bombay, as some of these districts will be inaccessible to each other without the help and intervention of Mysore State.

MAHARASHTRA

49. The Province of Maharashtra, as visualized by its advocates, will have an area of 13,34,66 sq. miles, with a population of 2,86,17,607 and a revenue of Rs. 37,45,14,000. It will comprise twelve districts of the existing Bombay Province, eight districts of C. P. & Berar, some areas from the border districts of Belgaum, North Kanara, Nimar, Chhandwara and Balaghat, portions of seventeen merged Deccan States and of the merged State of Bastar, the Kolhapur State, five districts of Hyderabad State, and the Portuguese possession of Goa. Geographically, this new Province will be divided into two regions of eastern and western Maharashtra, and will unify the three historic and ancient territories of Konkan, Desh or Deccan, and Vidarbha.

50. Desh or Deccan, which includes the seven above-the-ghat districts of Nasik, Poona, Satara, Sholapur, Ahmednagar, and East and West Khandesh, is the homeland of Marathi language and culture and has a homogeneous political outlook and aspiration. Konkan, which includes below-the-ghat taluks of Thana district, Bombay City and suburban districts, Ratnagiri and Kolaba and extends up to South Kanara, has a dialect of its own called Konkani. The central portion of Konkan, like Ratnagiri and Kolaba, has not become thoroughly Maharashtrian in political outlook, language and culture. But its northern portion comprising coastal taluks of Thana, Bombay City and suburbs and the southern portion comprising North Kanara and Goa, still retain some of their special characteristics and are not yet fully ready to be assimilated. In the four districts of Berar, namely Akola, Amraoti, Buldana, and Yeotmal, which in some way correspond to ancient Vidarbha, and the four Marathi districts of C. P., namely, Nagpur, Bhandara, Chanda, and Wardha—all the eight passing under the name of Mahavidarbha—is spoken the Marathi language; but, for generations, the people here have lived a separate life of their own, which has given them characteristics and outlook different from Deccan Maharashtra.

51. The movement for the unification of Maharashtra is of very recent growth, and has not yet gained sufficient momentum to become a mass movement or to produce a substantially agreed demand. The Marathas are an able and virile people, and an invaluable asset to the Hindu race and culture. They form 53 per cent. of population in the Province of Bombay, and 35 per cent. in the Province of C. P. & Berar, and are able to hold their own in any struggle for political power. But, unfortunately, the Poona school of thought, which is also the dominant school of thought in Maharashtra, does not see eye to eye with the rest of India as to the future destiny of this country or with regard to the part which Indian provinces

should play in the evolution of the Indian nation; and the desire for a Samyukta Maharashtra is the natural expression of their ideology, and the real or imaginary apprehensions of Gujarat and Mahakoshal domination are its natural allies.

52. Of all the units which will go to form a Samyukta Maharashtra, Mahavidarba was the first to come into the field with a claim for a separate province of its own. This movement arose in Berar and was mainly sponsored as a counter-claim against the claim of the Nizam to absorb Berar in Hyderabad.

53. In August 1947, the political leaders of Berar and Deccan came to an agreement, commonly called the Akola Pact, reproduced in Appendix IV, by which it was contemplated to bring into existence a united Maharashtra with two sub-provinces of Vidarbha and Desh, with a further provision that, if a united Maharashtra was not capable of realization, the Province of Vidarbha alone might be formed. Under the impact of the movement for Samyukta Maharashtra, this Akola Pact has now been torn asunder and is disowned by all parties; and there are at present three schools of thought in Mahavidarbha in regard to its future. One wants a separate Province of Mahavidarbha, the other is for making it a sub-province of a united Maharashtra, and the third is for complete merger with Maharashtra; but all desire to terminate the present relationship with Mahakoshal. We are satisfied that public opinion is still in the formative stage in Vidarbha and it does not yet know its own mind. In these circumstances it will not be possible to form a Province of Maharashtra with Vidarbha.

54. Konkan, the second unit of Samyukta Maharashtra, presents a still more formidable difficulty in the way of unification of Maharashtra. The heart of Konkan is the city and port of Bombay, the gateway of India and in many ways its pride and its industrial and money market. Bombay is cosmopolitan and multi-lingual, and a discussion regarding its future we have reserved for a separate chapter. It refuses by a large majority of interests to fit into any linguistic province, and another sizeable portion of Konkan area, which has not yet been thoroughly Maharashtrianized, is dreaming of a province of its own and is not yet ready to walk into a Maharashtrian hegemony.

55. We are thus left with Desh, which no doubt whole-heartedly supports the movement for the unification of Maharashtra, and for this it has enunciated certain principles, which we find difficult to accept. One of these principles is that the entire territory of Samyukta Maharashtra is inviolate. The other is that all the groups speaking one language, irrespective of their special problems and individualities, must be welded together, thus leaving Bombay and Mahavidarbha no option in the matter of choosing their destiny. We do not think any linguistic majority has any right to force a province upon such substantial minorities as those of Vidarbha and Bombay in Maharashtra, and of Rayalaseema in Andhra.

56. It might be possible to form two separate Marathi speaking provinces, viz., (1) Mahavidarbha comprising eight districts from C.P.; and (2) The Deccan consisting of eleven districts from Bombay. The demand for the formation of Mahavidarbha is, however, strenuously opposed by the advocates of Samyukta (United) Maharashtra. Opinion in Mahavidarbha has not yet quite crystallized; one section wants a United Maharashtra, another a sub-province in Maharashtra, the third an altogether separate Province. In these circumstances, it will not be safe to embark upon the formation of any Marathi-speaking province at present.

THE CITY OF BOMBAY

57. The city of Bombay stands in special relation to Maharashtra, Gujarat, and to India as a whole. Originally a small fishing village inhabited by Koelis, a clan of fishermen, and subsequently a small Portuguese settlement, it has grown during the last one hundred and fifty years to be one of the great cities of the world. In building up this great city, all communities, including the British, have taken their share; and, as a result, it has acquired a mixed individuality and is distinctly multilingual and cosmopolitan. Historically, it has never been a part of the Maratha empire; but it is the heart of Konkan, and the Marathis regard Konkan as their main limb. Geographically, it is separate from Gujarat; but north Konkan adjoins Gujarat and is the borderland between Maharashtra and Gujarat, and has never been entirely free from Gujarati influence. Industrially and commercially, it is the hub of India's financial and industrial activity. And altogether it excites some of the deepest emotions in Maratha and Gujarati hearts, and its future is the thorniest problem which the linguistic provinces are required to solve.

58. Closely connected with the city of Bombay is the adjoining island of Salsette, forming part of Bombay suburban district towards which the city finds its natural extension. Already a slice out of it from Juhu to Ghatkopar has become a suburb and virtually a part of Bombay, and a scheme is under way for Greater Bombay which aims at including the whole of Salsette island and some areas even beyond it. During the last war, Bombay received a large influx of population, to which substantial additions were made, after the termination of the war, by the refugees from Burma and Sind. And this expansion is still continuing and is rapidly altering the original percentages of the languages spoken in Bombay. Already the balance has somewhat tilted against the Marathas and there is every danger of their being swamped by the new population in the near future. And this has naturally created some anxiety in the mind of the Marathas in regard to the future of Bombay.

59. The total population of Bombay in 1931 was 11,61,383 and in 1941, 14,89,883. Its area in 1931 was 24 square miles and in 1941, 30 square miles.

60. The present revenue of Bombay is Rs. 1,320 lakhs. The Bombay suburban district had an area of 154 square miles and a population of 1,79,524 in 1931, and ten years later in 1941 it had an area of 153 square miles and a population of 2,51,147. The main languages spoken in Bombay suburban district are Marathi, Gujarati, Western Hindi, Canarese, Rajasthani, Konkani, and others. And, of these, the Marathi and Konkani percentage of the languages spoken in the city of Bombay in 1931 was 51.1 and the suburban district 64.4 respectively.

61. The Maharashtrian claim for the inclusion of the city of Bombay in the linguistic Province of Maharashtra is based on the grounds that, by adding Konkani to Marathi, the language percentage is raised to 51.1 according to 1931 census and becomes the majority language of the city, that Bombay is a part of Konkan and as such a part of Maharashtra, and, lastly, that Bombay being merely a city and not capable of being absorbed in any other contiguous linguistic area cannot stand by itself and necessarily should become a part of the contiguous linguistic Province of Maharashtra.

62. It is doubtful whether the Marathi majority recorded in 1931 still subsists. Whether the language spoken by the lower strata of society in their homes in the four Coastal taluks of Umargaon, Dahanu, Palghar and Bassein of North Konkan is basically Gujarati or Marathi is another controversial matter. But even if we accept for the purposes of this inquiry that Maharashtra has a language majority of 51 per cent. in the city, and that Bombay is not merely an island but is a part of Konkan and as such of Maharashtra, do these facts furnish any valid ground for the city being included in a linguistic province?

63. First of all, it is to be clearly understood that the city of Bombay taken by itself is not a unilingual area and cannot be classified as such in any sense of the word. This was apparently also recognized by the Congress Constitution of 1921 which labelled it Gujarati as well as Marathi. All the evidence before us is agreed that it would not be proper to call any area a unilingual area unless the majority of the one language spoken in that area reaches at least 70 per cent. and any area below that should be considered as bilingual or multi-lingual, as the case may be. On this principle it is claimed by all the advocates of linguistic provinces that all border districts where the majority language is 50 to 70 per cent. may be treated as bilingual and broken up into bits up to villages and their population appropriated to contiguous linguistic areas. This is the way in which equities are proposed to be adjusted in bilingual areas between rival linguistic groups who reside there.

64. If border districts, which are bilingual and which have developed an organism and an economic life of their own, are to be broken up to adjust the equities between rival linguistic groups, then we see no reason why capital cities, which have also developed an organism and an economic life of their own, should also be not disposed of in such a way that equities

between all linguistic groups are properly adjusted. It is true that the city is a different kind of organism and cannot be conveniently broken up. But there are other ways of satisfying the claims of different parties, and there seems to be no principle upon which a present of the entire city should be made to one out of the many multi-lingual groups. It is on the strength of the principle referred to above that Andhra claims a share of, or a joint interest in, Madras, but Maharashtra inconsistently refuses to apply this principle to Bombay and claims the entire city for itself.

65. In all the non-Maharashtrian evidence that came before us there was practical unanimity that the city of Bombay should be formed into a separate province, either Centrally administered or with a Government of its own and in no case should it be placed under a unilingual Government. Some expert evidence was also led before us to show how the commercial and financial interests of the Bombay City and of India as a whole would be affected by a sudden change in the form of the Government in Bombay. In the view which we have taken of the problem it is not necessary to express an opinion upon this claim and it remains to be considered at the proper time when the occasion arises to give a decision on the fate of Bombay.

66. We are of the opinion that bilingual or multi-lingual areas should be disposed of having regard to their own economic or administrative interests, and the principle on which linguistic provinces are to be formed has no application to them; and, unless it be in the interests of these areas themselves, they should not be broken up and allotted to various linguistic groups or to a single linguistic group. And the fate of these areas falls to be decided by the totality of circumstances in each case and not by the single consideration of language majority or the contiguity of the area to any unilingual area.

67. The best fortune that we can see for the city of Bombay is that it should continue as it is today, the meeting-place of all communities, their source of pride and affection and a convenient centre for their joint labour and enterprise. It will be incongruous to make this multi-lingual, cosmopolitan city the capital of a unilingual province.

68. The future of Bombay, therefore, seems to us by itself a very strong argument against the formation of linguistic provinces. And if these Provinces are ultimately decided upon, we suggest that Bombay and possibly Madras should be kept wholly outside the vortex of linguistic politics and disposed of in the best way possible in their own interest and in the interests of the country as a whole and not on linguistic considerations alone.

THE CITY OF MADRAS

69. The city of Madras with its port is situated on the west coast of the Bay of Bengal. It occupied an area of 30 square miles in 1941, and its

population, according to the census of 1941, was 7,77,481, and its estimated population for 1948, according to the Monthly Bulletin of the Corporation of Madras published in June 1948, is 9,83,087. It forms one of the twenty-five districts of the existing Province of Madras and yields a revenue of rupees five hundred and eightynine lakhs.

70. Statistics of the languages spoken in the city of Madras were not recorded after the census of 1931 and those of 1931 have now become somewhat out of date, and their accuracy is also challenged. In 1931 the total population recorded was 6,47,230, of which Tamils were 4,11,820 (63·6 p.c.), Telugus 1,24,649 (19·1 p.c.), Hindusthanis 62,651 (9·7 p.c.), Kannadas 4,539 (0·7 p.c.), and Malayalees 9,229 (1·4 p.c.). In Chingleput district which surrounds Madras, according to the census figures of 1931, Tamils form 78 per cent. of the population and Telugus 19·3 per cent; Telugus number 3,19,946 as against 12,90,877 Tamils; and in some villages of some taluks of the district Telugus form a majority and are interspersed throughout the district. In the adjoining districts of Chittoor and Nellore Telugu is the majority language of 73·4 per cent. and 91·7 per cent. of the people, respectively, and in the former district Tamil also is the language of 19·3 per cent. of the people and in some villages of some taluks it is also the majority language and is also interspersed throughout the district.

71. The city of Madras is the capital of the Province. It is the centre of the social, political, educational, cultural, economic and industrial life of the entire Province and derives its sustenance and nourishment from the resources thereof and, in its turn, influences and determines the tone of activity of the Province in these fields. It is also substantially a cosmopolitan city built by the joint enterprise of all communities but mostly Tamil and Telugu. Both Tamils and Telugus have got very strong association with and attachment to Madras and it evokes very strong feelings and emotions in them.

72. The Telugus claim Madras on the ground that it falls within the Telugu area; they would like to draw the southern boundary of Andhra below Chingleput district so as to include Madras in it. They also claim it on the grounds that the villages surrounding it are Telugu villages and that the initial grant by which it came to be a British settlement in the fifteenth century proceeded from a Telugu Raja or his agent. It is said that it was at its inception a Telugu town and was subsequently built up by Telugu industry and patriotism.

73. The Tamils claim it on the ground that it was within the borders of Tamil-Nad as described in ancient books, that it contains at present a majority of Tamil population and it is surrounded at present by preponderatingly large Tamil areas.

74. These claims are challenged and counter-challenged but in our opinion this is a fruitless controversy. Historical arguments on both sides

may have some basis in facts but they are somewhat remote and the controversy can only be decided on existing facts. And on these facts the city of Madras cannot be taken exclusively either as a Telugu area or as a Tamil area and it can only be regarded as a multi-lingual and cosmopolitan city, though it may be a fact that Tamil is the majority language in the city and in the areas which surround it and this majority is not accidental or temporary and can be traced back at least to 1881, the earliest year for which census figures are available. A city which contains so many associations of both the communities, which owes its life and existence to the joint devotion and patriotism of both the communities and of many other communities and which has assumed a cosmopolitan character in the course of several generations, cannot be disposed of, on mere linguistic considerations, in favour of one community without causing grave dissatisfaction and injustice to the other.

75. A number of suggestions were made to us in regard to the disposal of Madras, none of which is free from difficulty or commends itself to us. It is neither desirable nor practicable to divide the city physically into two parts north and south of river Cooum and allot the northern portion to Telugus and the southern portion to Tamils because it is not possible to bring out a purely Telugu area or a purely Tamil area either in the north or in the south of Madras. The social, political and industrial life is so inter-mixed in both sections of the city that it would retain its multi-lingual character even after separation and a physical partition of the town will not only destroy its organic character but also spell its ruin from every point of view.

76. Another suggestion was made by the Telugus that Madras should be made a joint capital of both Andhra and Tamil-Nad from where they should carry on their respective Governments. The details of this arrangement were not explained to us, and it is not easy to see how it can be fitted into in the new Constitution and worked without causing considerable administrative difficulties.

77. The third suggestion, which received wide support from the Telugus, was that it should be made into a Chief Commissioner's Province either by itself or with the addition of a few villages from the surrounding districts on the model of the present Delhi Province. The case of Delhi is a special one in which a city of the Punjab, possessing no special importance at the time, was for political reasons raised to the status of the capital of India. We do not know how Madras will fare after being torn from its present Province with three rival capitals competing with it in Andhra, Tamil-Nad and Kerala. Such an experiment has never been tried before and its success may not be perfectly assured.

78. The difficulty in making a suitable provision for Madras presents itself as another strong argument against the formation of linguistic provinces. But if the formation of these provinces is inevitable, the city of Madras

should also be treated as multi-lingual and cosmopolitan, like Bombay, though not quite to the same extent as Bombay, and should be disposed of on the considerations which we have stated while discussing the case of Bombay.

Chapter III

FINANCIAL POSITION OF THE PROPOSED PROVINCES

(By Shri B. C. Banerji, I. A. & A. S., Secretary)

79. In this chapter is discussed in detail the financial position of the proposed provinces and the consequences that their creation is likely to produce on the adjoining territories. This is a matter of vital importance inasmuch as sound finances constitute the bedrock on which good and efficient administration rests. In fact no administration can be secure and stable unless it is broad-based upon strong financial foundations.

80. It is just as well to state at the outset that there are certain factors, which have brought in an element of uncertainty in the calculations of the financial consequences of the creation of the new provinces. The boundaries of the new provinces have not yet been finally fixed, and until they are determined it is not possible to estimate the financial consequences with the precision that one might desire. Another element of uncertainty is furnished by the consideration that much will depend on the decision as to whether the cities of Bombay and Madras will be allowed to form parts of some province or other or constituted into separate provinces. As the revenue collected in each of these cities is very large the decision regarding its future position is bound to have financial consequences, which cannot be ignored. Nor can one ignore the probable effects of the introduction of prohibition policy in the various provinces. As far as Andhra, Tamil-Nad and Kerala are concerned, the position is quite clear inasmuch as the prohibition policy has been introduced *in toto* there. No definite information is, however, available as to whether the prohibition policy will be pushed to the extreme or slowed down in Maharashtra, Karnataka, Gujarat and Hindi C. P. In the circumstances it must be said that the financial estimates relating to the proposed provinces leave some room for adjustment.

81. It may be mentioned here that in the examination and assessment of the financial position of the proposed provinces, three years' average of revenue and expenditure has been taken as the basis of calculation for it is thought that three years' average is a safer guide in such matters than the figures of one year, which may contain abnormal items. It is true that the years 1945-46 and 1946-47 are not quite normal years for budgetary purposes and that some items of an extraordinary nature of both revenue and expenditure occurred in those years. But special or extraordinary

items of revenue and expenditure are almost a common feature of a governmental budget and some item or other of this nature will be found in the budget of almost every year. Certain items of receipts, such as excise revenue and grants for Post-war Development Schemes, have, therefore, been omitted from the calculations, as, for reasons recorded elsewhere, these are not likely to recur in the immediate future. Certain items of expenditure, such as those relating to Post-war Development Schemes, have also been similarly excluded from consideration.

82. It was contended by some in Madras that Civil Defence expenditure should also be left out of account. It would however appear that such a contention is based on misconception. Civil Defence expenditure fell broadly under 4 sections—(1) A.R.P. Measures, (2) War Police, (3) Food supply for Defence Services, and (4) Miscellaneous items such as civil representatives of the Army, A.R.P. training schemes, Cadet Training Schools, etc. The expenditure recorded under section (1) was pooled and divided in accordance with a slab system under which the Central Government met an increasing proportion of expenditure after certain limits. The expenditure under item (2) was borne by the Central Government subject to special allocation, while that under item (3) was fully borne by the Central revenues. The provincial revenues were debited with the entire cost of item (4) only. In other words, Civil Defence expenditure was to a large extent reimbursed to the Provincial Government by the Central Government. Besides, if Civil Defence expenditure has been included in the calculations of Expenditure, the receipts also have been included in Revenue. Moreover, it is not correct to say that Civil Defence expenditure has ceased altogether. It will appear from the Budget Memorandum of the Government of Madras for 1948-49 that it continues in the shape of expenditure on Home Guards, Special Police, etc., the only change being that, instead of the expenditure being shown under 64-B Civil Defence, it appears under 29-Police. As already stated items of a special or extraordinary nature do appear in the Budget Estimates almost every year and cannot be eliminated altogether. It is, therefore, difficult to support the view that the item of Civil Defence expenditure should be omitted from the calculations altogether.

83. It may be added here that the calculations have been based entirely on the figures supplied by the Finance Departments and the Accountants General of the provinces concerned. These figures have been subjected to a test-check by the Secretary, who has consulted officers of the Finance Departments of the Governments concerned whenever necessary. Slight alterations and corrections have also been made here and there.

84. The calculations of the financial consequences have been made on the assumption that the smallest unit or division would be a whole district. If, however, it so happens that a district is partitioned and some of its talukas given to another district, slight readjustments of financial figures will be necessary.

85. In the matter of apportioning revenue and expenditure, as far as possible, between Andhra and Tamil-Nad the principle of division on population basis has been adopted. It will be readily conceded that any division on area basis will not yield satisfactory results as Tamil-Nad has a smaller area but a bigger population whereas Andhra has less population with a larger area. Nor will any division on the basis of the number of districts in each province be fair and equitable inasmuch as transactions of receipts and expenditure occur at times in the treasuries of districts other than those to which they relate. The Government of Madras have accepted the basis of population in framing their estimates of Revenue and Expenditure of Andhra and it will be agreed that in the circumstances of the case division on population basis is a suitable guide. The principle of division followed in the other cases has been explained in the relevant paragraphs.

86. As regards the question of division of assets and liabilities, it is thought that as a general rule, it should be effected on the basis of location, that is to say, those assets which are situated in an area included in a particular province should be allocated to that province, the liabilities attaching to the assets being also taken over by that province. It is, however, quite conceivable that such a principle of division may fail to do equal justice to the two parts separated from each other, for it may be found that according to this principle of division a disproportionately larger number of assets are allotted to one province, which thereby gains at the expense of the other. To hold the scales even between the separating parts it may be necessary to adopt some other means of division. One such way would be to evaluate the assets at their market price and divide them between the two separating parts on population or revenue basis and compensate the losing province by payment in cash.

87. As regards provident funds of Government servants, the responsibility for their payment may be accepted by the Governments under whom they may be serving on the date of separation. This will obviate the difficulties and complications that the adoption of any other principle would involve. Individual cases where the application of this principle may present difficulty should be decided on their merits.

88. With regard to the pensionary liabilities a more or less similar line of action may be adopted. Each Government may undertake to continue to make payment of those pensions, which were being drawn at the treasuries within its jurisdiction and were on the date of separation borne on the books of those treasuries for payment. As regards pensions sanctioned after the date of separation, the liability should be taken over by the Government, which sanctions the pensions or under whose administrative control the sanctioning authority happens to be.

89. A word of explanation may be added with regard to the Overhead Charges. These include charges relating to the head of a province and his

personal staff, the Council of Ministers, the Secretariat and the Legislature, the Heads of Departments and their establishments, the setting up of new institutions, etc., and such incidental charges as the creation of a new province will necessarily involve. Rough and ready estimates of these charges have been made on the basis of the Bombay, Madras or the C. P. & Berar scales of pay etc., as the case may be.

90. The following paragraphs contain a detailed examination of the financial position of the proposed provinces and adjoining territories. A Financial Appendix containing statements giving details regarding revenue and expenditure, etc. is annexed.

ANDHRA

91. The case of Andhra may be taken first. It will be seen from Statement I that the average annual revenue for the three years from 1945-46 to 1947-48 of the 11 Telugu districts, as they are now, amounts to Rs. 1653.79 lakhs or, say Rs. 1654 lakhs. Adding to this figure a sum of Rs. 110 lakhs, being the increase in revenue due to enhancement of the rates of sales tax, the total comes to Rs. 1764 lakhs. The adoption of the prohibition policy has, however, led to a considerable decrease in excise revenue, and it has been calculated that its extension to the remaining districts of the Province will, as far as the Telugu districts are concerned, result in a further decrease of Rs. 493 lakhs. Deducting this amount, the total of revenue comes to Rs. 1271 lakhs only. Besides, there has been an average annual receipt of Rs. 64 lakhs on account of Post-war Development Schemes. This amount should be deducted from the total revenue as this is an extraordinary item which may not recur in future and its inclusion would not make the budget quite normal. The average annual revenue, therefore, may reasonably be taken as Rs. (1271-64) 1207 lakhs.

92. As regards expenditure, it will appear from Statement I that the average of the actuals for 1945-46, 1946-47 and 1947-48 for the Telugu districts comes to Rs. 1684.82 lakhs. To this amount should be added a sum of Rs. 70 lakhs, being the increase in expenditure caused by the enhancement of dearness and house-rent allowances and another sum of Rs. 32 lakhs on account of staff for the enforcement of prohibition policy. The Government of Madras do not expect this year, and perhaps for some years to come, any grant from the Government of India for the Post-war Development Schemes, not to talk of an increase in grant, which they originally anticipated. It was, therefore, suggested by the Government of Madras that in respect of Post-war Development Schemes no amount on account of receipts or expenditure should be taken into account as far as the years immediately ahead were concerned except to the extent of the commitments already made. As, however, these commitments relate

to schemes which are not likely to take long to complete, it is considered proper to leave them out of consideration altogether. But the 'Overhead Charges', that is to say, charges which the creation of a new Province necessarily involves, must be added. According to the calculations based on Madras scales of pay, etc., these charges would come to Rs. 150.00 lakhs, but as a portion of it has already been included in the calculation of the share of unallocated items of expenditure, a sum of Rs. 75.70 lakhs only should be added. This would bring the total of expenditure to Rs. 1862.52 lakhs, leaving a gap of Rs. 665.52 lakhs between revenue and expenditure. This, however, does not complete the picture. It must be remembered that if Andhra is not to have Madras as its capital, it must build a new capital of its own. According to rough calculations made by the Chief Engineer, P.W.D. (General), Madras, the approximate cost of construction of a new Capital based on 1948-49 rates would come to Rs. 997.17 lakhs or Rs. 10.00 crores in round numbers. The interest charges on this capital expenditure at the rate of 4 per cent. would amount to Rs. 40.00 lakhs and the maintenance charges of the buildings on the basis of 2 per cent. ($1\frac{1}{2}$ per cent. for annual repairs and $\frac{1}{2}$ per cent. for special repairs) to Rs. 20.00 lakhs. In other words, a sum of Rs. 60.00 lakhs, should be added to the total of Rs. 1862.52 lakhs shown above, thereby bringing the grand total of expenditure to Rs. 1922.52 lakhs. Deducting from this amount Rs. 64 lakhs, being the annual expenditure on Post-war Development Schemes referred to above, the total expenditure amounts to Rs. 1858.52 lakhs, and the deficit to about Rs. 651.52 lakhs.

93. The position of the proposed Province of Andhra as regards Revenue and Expenditure is summarized below :

SUMMARY

Revenue (in lakhs of Rupees)

Revenue	1653.79
Add increase due to enhancement of rates of Sales Tax	110.00
Deduct decrease due to introduction of prohibition	493.00
Deduct Grants for Post-war Development Schemes	64.00

TOTAL . 1206.79

or

1207

Expenditure (in lakhs of Rupees)

Expenditure	1684.82
Add increase due to enhancement of dearness and house-rent allowances	70.00
Add increase due to Prohibition Enforcement Staff	32.00
Add Overhead Charges	75.70
Add Interest Charges on the cost of construction of new Capital	40.00
Add Charges on maintenance of buildings etc., in new Capital	20.00
Deduct Post-war Development Schemes	—64.00
TOTAL	1858.52
Deficit	—651.52
Say	—652.00

94. It will thus be seen that the new Province of Andhra will have a deficit of Rs. 652 lakhs to start with. It has already been pointed out that out of this deficit of Rs. 652 lakhs as much as Rs. 493 lakhs is attributable to the introduction of prohibition policy by the Government of Madras. It is understood that the policy of prohibition has been extended to the whole of the Presidency so that the drop in revenue to the extent of 493 lakhs is a certainty. As far as it can be envisaged now, the financial position of the Andhra Province is frankly disquieting. It is not enough to contemplate that in a few years' time it might be possible for Government to so husband its resources as to find adequate funds for its day-to-day administration. What is more important is that the Province must have sufficient means to carry out the various development schemes, which are of vital importance to the people and the Province.

KERALA

95. As regards Kerala the story is briefly told. The total revenue, including increase due to enhancement of sales tax, comes to Rs. 332 lakhs as against a total expenditure of Rs. 445 lakhs, inclusive of Overhead Charges and increase due to enhancement of dearness allowance, etc., and entertainment of Prohibition Enforcement Staff. Or, in other words, the new Province of Kerala, if formed, will have a deficit of 113 lakhs to begin with. The position becomes worse when it is remembered that Malabar will have to build a capital of its own and this will necessarily involve the expenditure of a few lakhs of rupees by way of interest charges on borrowed capital and maintenance charges on buildings etc.

96. In view of the observations contained in the paragraphs of the Report relating to Kerala, no more detailed comments on the financial position of Kerala are called for.

KARNATAKA

97. As far as can be seen, Karnataka will comprise four districts of Bombay, viz., Belgaum, Bijapur, Dharwar and Kanara, and one district of Madras, viz., South Kanara. The table below will explain the financial position of Karnataka as it will stand after its creation. In calculating the Overhead Charges the Bombay and Madras scales of pay and allowances, etc., as the case may be, have been taken into account. It will appear that the new Province will be faced with a deficit of Rs. 2,23 lakhs.

	Revenue	Expenditure
1. 4 Bombay districts	2,75·83	4,14·59
2. South Kanara	1,47·92	1,47·43
	4,23·75	5,62·02
Add Overhead Charges . . . . .	..	60·00
Add Interest and Maintenance Charges in connection with the construction of a new Capital . . . . .	..	25·00
	4,23·75	6,47·02
Deficit	-2,23·27	

MAHARASHTRA

98. The proposed Province of Maharashtra is expected to consist of ten districts of Bombay and eight districts of C. P. & Berar. The calculations are, as in the other cases, based on three years' average. Apportionment of Taxes on Income and Grants for Post-war Development Schemes from the Government of India and Forest Revenue and Expenditure has been made on Revenue basis. It is felt that division on population basis would be woefully unfair to Bombay City, which would in that case get only 8 per cent of Income Tax as its share whereas over 60 per cent of the collections of Income Tax are made in Bombay City alone. If, on the other hand, the collection basis is adopted, Bombay would get the lion's share of Income Tax although it forms a very small, though no doubt very important, portion of the Presidency. Division on Revenue basis is, therefore, considered to be fair and most equitable and on this basis the respective shares of the four parts of Bombay will be as shown below :

	Per cent.
Bombay City	40
Maharashtra	30
Gujarat	20
Karnataka	10

99. It may be stated here that in calculating the figures given below Excise Revenue and Expenditure have been taken into account, except to the extent

indicated in the Statements of Revenue & Expenditure included in the Financial Appendix.

If the prohibition policy is allowed to run its full course in the Provinces of Bombay and C. P. & Berar, excise revenue will eventually be eliminated altogether so that the total revenues of the two units will necessarily dwindle and the deficit becomes larger. Of course, there would be some decrease in excise expenditure as well, but that will not materially affect the position.

100. The following Table gives a summary of the financial position of the 18 districts composing Maharashtra :

	Revenue	Expenditure
1. 10 Districts of Bombay .	9,34·40	11,84·79
2. 8 Districts of C. P. & Berar.	6,47·34	6,80·97
	<u>15,81·74</u>	<u>18,65·76</u>
		90·00
		Nil as
		Nagpur is
		there.
	<u>15,81·74</u>	<u>19,55·76</u>
	<i>Deficit</i>	<u>—3,74·02</u>

101. If it be decided that the City of Bombay should be allotted to Maharashtra, then the position will be reversed, for with the surplus of Bombay added to the resources of Maharashtra, Maharashtra becomes a surplus Province.

102. If, however, it be decided that Maharashtra should comprise the 10 districts of Bombay only and that the 8 districts of C. P. & Berar should be formed into a separate Province called Mahavidarbha, then the financial position of the respective Provinces will be as indicated below :

Maharashtra (10 Districts of Bombay)		Mahavidarbha (8 Districts of C.P. & Berar)	
Revenue	9,34·40	Revenue	6,47·34
Expenditure	11,84·79	Expenditure	6,80·97
Add Overhead Charges .	50·00	*Add Overhead Charges	42·48
Add Interest and maintenance charges in connection with construction of Capital.	50·00	Add Interest on capital outlay on construction of Capital.	Nil as Nagpur is in Mahavidarbha.
	<u>12,84·79</u>		<u>7,23·45</u>
<i>Deficit</i>	<u>—3,50·39</u>	<i>Deficit</i>	<u>—76·11</u>

*As given by the Government of C. P. & Berar.

FINANCIAL EFFECTS ON ADJOINING TERRITORIES

103. The Commission's terms of reference require an examination of the financial consequences that are likely to follow from the creation of the new Provinces in the adjoining territories of India. These territories roughly are Tamil-Nad, Mahakoshal (Hindi C. P.) and Gujarat. The financial effects in these Provinces have been assessed more or less on the same lines as in the case of the proposed new provinces.

TAMIL-NAD

104. A summary of the financial position of Tamil-Nad as it will be after separation will be found in the Table below :

	Revenue (In lakhs) Rs.		Expenditure (In lakhs) Rs.
Revenue	23,53	Expenditure	21,69
Add increase due to enhancement of Sales Tax.	1,65	Add increase due to enhancement of dearness allowance, etc. . .	90
	<u>25,18</u>		
Deduct decrease due to prohibition.	6,70	Add increase due to Prohibition Enforcement Staff	33
	<u>18,48</u>		<u>22,92</u>
		Add interest and maintenance charges connected with the construction of Capital.	60
		Add Overhead Charges	75
			<u>24,27</u>
Deficit			<u>-5,79</u>

N. B.—Government of India grants for Post-war Development Schemes have been excluded from consideration.

105. If Madras City is separated from Tamil-Nad, the deficit of Tamil-Nad will be increased by the addition of 75 lakhs on account of overhead charges and 60 lakhs on account of interest and maintenance charges in connection with the construction of a new capital. The total deficit will then be 579 lakhs as shown above.

If, on the other hand, Madras City is allowed to remain in Tamil-Nad, the question of construction of a capital will not arise and the deficit will be reduced by 60 lakhs. The addition of the Madras City surplus of 351 lakhs will further reduce the deficit to 168 lakhs only.

MAHAKOSHAL

106. The following is a short summary of the financial position of Mahakoshal or Hindi C. P. :

	Revenue		Expenditure
Receipts	5,09·45	Expenditure	4,35·11
		Add Overhead Charges	50·40
		Add interest and maintenance charges in connection with the construction of a new Capital.	50·00
			<u>5,35·51</u>
Deficit			—26·06

GUJARAT

107. A summary of the financial position of Gujarat as it is expected to be after the separation of Maharashtra and Karnataka is given below :

	Revenue		Expenditure
Revenue	5,16·41	Expenditure	4,14·57
		Add Overhead Charges	41·20
		Add Interest and Maintenance Charges in connection with the construction of a new Capital	25·00
			<u>4,80·77</u>
Surplus			+35·64

BOMBAY CITY

108. The following is a brief summary of the financial position of the Bombay City as it will stand after the separation of Maharashtra and Gujarat :

	Revenue		Expenditure
Revenue	13,20·28	Expenditure	7,47·42
Surplus			+5,72·86

MADRAS CITY

	Revenue		Expenditure
	510		87
Add increase due to increase in the rates of Sales Tax.	90	Add increase due to increase of dearness allowance, etc.	10
	<u>600</u>		
Deduct decrease due to prohibition	—140	Add increase due to prohibition Enforcement Staff	12
	<u>460</u>		<u>109</u>
Surplus			+351

Chapter IV

FINANCIAL, ECONOMIC, ADMINISTRATIVE AND OTHER CONSEQUENCES

109. The financial, economic, administrative and other consequences of the proposed provinces are matters which, within the limited time and material at our disposal we have not been able to explore fully. Some of these consequences are matters of speculation and controversy. Others are obvious and can be briefly stated.

110. As the seven new Provinces of Andhra, Kerala, Tamil-Nad, Karnataka, Maharashtra, Gujarat and Mahakoshal will take the place of the explained in Chapter III. And in Appendix V are shown the size, population obvious that the new provinces will be comparatively smaller in size, population and revenue than many existing Provinces of India. The financial position of these new Provinces has been examined by our Secretary, who is a senior member of the Indian Audit and Accounts Service, and is explained in Chapter III. And in Appendix V are shown the size, population, and revenue of the existing Provinces, unions and some States and of the proposed Provinces, and the relative place of these new Provinces in the scheme of Indian Provinces can be judged from it.

111. The existing Indian Provinces and States do not follow a uniform pattern in size, population and revenue, and present great diversities in these matters. The viability of a province in the Indian Union, therefore, can only be a relative question. These new Provinces, which will be faced with deficit budgets, claim that they will be able to cut their coat according to their cloth by reducing expenditure and by imposing fresh taxation. Be that as it may, the margin of reserve in most of them is at present so small that, for many years to come, left to themselves, they can only function, if at all, as mere police States and may thus be a great handicap to national development.

112. It is also manifest that the administration of the same area and same population, which had hitherto been carried on by three Provincial Governments will in future have to be carried on by seven and the setting up of these will involve an annual recurring expenditure of about Rs. 6 crores, for which the Indian tax-payer will have to foot the bill at a time when money is urgently wanted for defence and nation-building.

113. The new Governments, with the possible exception of Maharashtra, will all be under the necessity to build their capitals immediately, which may approximately involve an expenditure of about 40—50 crores. This housing and building programme is likely to clash seriously with the refugee problem and the building and housing programmes of the Governments and it is unlikely that the country's already over-taxed resources in building materials will be able to bear any further strain. Besides, such

heavy expenditure on buildings is also likely to worsen the inflation problem.

114. These new Provinces, in common with the rest of India, stand in need of agricultural and industrial development for which various projects have been prepared, the execution of which will fall upon the new Provinces in relation to their respective areas. We do not think that these Provinces, left to themselves will, by their own resources, be able to execute these projects with their diminished credit, and the Centre must also be prepared to come to their help and finance all large developmental schemes.

115. The Administrative Service at present functioning in Madras, Bombay, and C. P. and Berar, is maintained on a provincial basis and includes in its personnel a fair proportion of each large linguistic group residing in the Province. This service will have to be broken up and made into an exclusively linguistic group service. Whether this partition can be properly carried out without causing hardship in individual cases, and whether sufficient technically qualified talent will be available in each linguistic group is doubtful. But we are certain that, for some time to come, the administrative efficiency of the service will be lowered. The sudden withdrawal of British personnel from the Administrative Service has already taxed its resources to the utmost; with an acute shortage of administrative ability and experience we are just carrying on the administration on the momentum left by the British with the help of stop-gap arrangements and on a bare margin of safety. In administrative experience and efficiency the new Provinces will be at a further disadvantage till they have trained their own officers, and it cannot be said with certainty that the new services will be able to stand up to any serious crisis in the maintenance of law and order or that they will be able to conduct the administration with the same efficiency.

116. The new linguistic provinces will immediately bring into existence a new kind of minority problem which did not exist before. In a heterogeneous province it is not possible for any linguistic group residing in the province to call any area, even its homeland, exclusively its own and to regard any person residing there as an alien or outsider. But the moment a province is allotted to a majority linguistic group as such and that group forms a majority Government in it, it begins to regard the area as exclusively belonging to that particular linguistic group, and to treat all persons not belonging to the majority linguistic group and speaking a different language as outsiders and aliens. And, by a natural reaction, people not speaking the majority language resent the intolerance of the majority or have their own affinities with a separate linguistic group elsewhere, and thus a vicious circle of mutual hostility begins and a minority problem comes into existence. The best illustration of this tendency is to be found in the Telugus of Orissa and the Tamils of southern Travancore, and, in a minor degree, in the complaints of minorities in all border districts.

The linguistic groups do not form in any area a majority of more than 75—80 per cent., and it will not be possible to form any province without leaving a minority of 20—25 per cent., who will be a constant source of embarrassment to the administration of the province.

117. Side by side with the minority problem a State problem will also come into existence, demanding immediate solution. The destiny of Travancore and Cochin is entirely linked up with that of Malabar, as the destiny of Mysore is with that of united Karnataka and of Kolhapur with that of Maharashtra. A great deal of ground has already been prepared to bring these areas and people residing there together; and, with the formation of linguistic provinces, their union will become a live issue. And it will be only a question of time when the agitation turns to Hyderabad to add to the worries of an already harassed Government. The distant rumblings of the Tamil agitation in relation to the southern tip of Travancore, which were heard by us, give us an idea of how close the danger is of Telugu, Kannada, and Maharashtrian agitation in relation to Hyderabad.

118. Karnataka and Kerala present separate and special problems of their own. The Karnataka districts fringe round the State of Mysore (as has been explained in para. 44), and communications between one end of the Province and the other will be difficult and awkward. Mangalore, for instance, will be accessible by rail from Dharwar, which is mentioned as the likely capital, by a long and circuitous route passing through Malabar and Madras. The Province of Kerala will consist of only one district (Malabar) and such a Province, with the same set of officials posted permanently in the district, will not be in the interests either of the people or of good Government. Malabar is a deficit area in food, which it now receives from surplus areas in the Madras Presidency, and trade channels have been established accordingly. These will be seriously affected if Malabar is cut off. These administrative problems will no doubt disappear to some extent when Malabar unites with Cochin and Travancore States and Karnataka with the Mysore State. Such a union would be in the interests of the States as well: in particular the land-locked State of Mysore would automatically secure a passage to the sea with fine harbours—not an inconsiderable advantage. We trust that the negotiations, which are afoot, will bear early and fruitful result.

119. The division into correct linguistic areas will naturally need a Boundary Commission working through many border districts and so hotly are many of these contested that plebiscites will have to be held. This will be a long drawn-out process, in which feelings would be aroused to a much greater extent than even during our inquiry, and, however, carefully and conscientiously the work may be done, there are bound to be left dissatisfied parties with resultant bitterness. This may take long to disappear and thus impede all efforts at nation-building.

120. The formation of linguistic provinces is sure to give rise to a demand for the separation of other linguistic groups elsewhere. Claims have already been made by Sikhs, Jats and others and these demands will in course of time be intensified and become live issues if once the formation of linguistic provinces is decided upon.

Chapter V

SUMMARY AND CONCLUSIONS

121. The existing Provinces of Madras, Bombay, and the Central Provinces and Berar hold together within their respective territories large linguistic groups which are unequally matched for the struggle for existence or for the struggle for political power. In the struggle for political power, which British imperialism and subsequently democracy under British rule introduced in this country, these heterogeneous elements were not completely successful in producing harmonious Governments, with the result that a demand grew up in course of time on the part of the groups, which felt that they had suffered in the struggle for a separate Government of their own.

122. When a conflict of interest, real or imaginary, arises between linguistic groups differing in numerical strength and in mental and moral equipment, it does not take long for the minority to feel that it has no chance against the majority, and it finds an easy solution of its difficulty in a desire for separation. Whether this demand is due to the aggressiveness of the more successful groups or to some inherent or accidental weakness in the less successful ones or to both it is not easy to determine; nor is it necessary to do so. It is sufficient to note the conditions which bring it into existence and to observe that it originates in a desire for power which, in its lower sense, is a desire for jobs and offices and, in its higher sense, a desire for service to the community and for its material and moral advancement. And it actuates the conduct of both honest and patriotic persons and of self-seekers in the groups in which such a demand has sprung up.

123. The intensity of the demand and its duration as also its justification vary from province to province, and within linguistic groups of the same province and also within the different sections of the same group. It has a long and persistent history of agitation behind it in Andhra, and exists in its strongest form in the coastal districts thereof. The Rayalaseema districts of Andhra are not affected by the demand to the same extent, and a substantial section is opposed to it. Just as there is a genuine apprehension in the coastal Andhra mind against Tamil domination, so too, there is an apprehension, though in a somewhat lesser degree, in the Rayalaseema mind against coastal domination. Next to Andhra, the demand is insistent

in Karnataka, though there it is moderated by the knowledge that, for the unification of Karnataka, the co-operation of Mysore State is essential and that it may require some time for preparation. In Kerala there is a general recognition that, without the merger of Cochin and Travancore States, a separate province cannot exist; and the demand there is weakest and is rightly conditioned upon the formation of any other linguistic province out of Madras, and the people are prepared to wait till a United Kerala comes into existence. The Maharashtra is a late-comer in the field of agitation for linguistic provinces, and it is still a divided house comprising three cross-divisions of Konkan, Desh, and Mahavidarbha, none of whom has suffered in any way in the struggle for political power.

124. The main ground put forward for the demand for linguistic provinces is that they are essential for the working of democracy, as also for the working of the Constitution, and a linguistic province is the best form of a homogeneous province, which the existing circumstances in India permit to be formed. It is said that the working of democracy is impeded in the field of Education, Legislature, and administration by a multiplicity of languages spoken in a province. It is further said that autonomous provinces are embodied in our Federal Constitution and autonomous provinces imply autonomous States. And as the larger linguistic groups now existing in India claim historically to have formed sub-nations, they contend that the appropriate place for these sub-nations is in a linguistic State, just as, for the same reason, the correct principle upon which autonomous provinces should be formed is the linguistic principle.

125. Linguistic homogeneity in the formation of new provinces is certainly attainable within certain limits but only at the cost of creating a fresh minority problem. More than half the Malayalam and Kannada speaking people are living in Indian States, and only a little less than half of the Telugu and Marathi speaking people are living either in Indian States or in Union Provinces from which they cannot be transferred to new linguistic provinces either for want of geographical contiguity or want of their consent to be so transferred. These must remain, at least for many years to come, outside the sphere of a linguistic province. Even in the limited areas of the Union, which can be made homogeneous linguistically, border districts on each side and the capital cities of Bombay and Madras will remain bilingual or multi-lingual. And, as has been explained before, nowhere will it be possible to form a linguistic province of more than 70 to 80 per cent. of the people speaking the same language, thus leaving in each province a minority of at least 20 per cent. of people speaking other languages. And considering the evidence, which has come before us in regard to the Telugus, who were transferred to Orissa from Madras at the time of the formation of the Orissa Province, and the Tamils, who live in Southern Travancore, it is easy to foresee that similar minority problems on a much more extensive scale will arise all over the linguistic provinces.

126. As for persons speaking the same language forming a sub-nation, whatever may have been their condition in the past, now for 200 years these people have got separated and scattered over different areas in British-made provinces or Indian States and have become assimilated with them, so much so that the Rayalaseema districts are not at present eager to throw in their lot with the coastal districts; Cochin and Travancore would not readily coalesce with Malabar; and there are difficulties in the way of Mysore merging in Coorg and Karnataka districts; and Mahavidarbha is not keen on joining Bombay Maharashtra. Each of these differing elements now has its own special needs and problems which require individual treatment and which prevent these elements from easily coming together in one homogeneous province contemplated by the Constitution unless special provisions be made for them.

127. It may, therefore, be safely assumed that linguistic groups as sub-nations do not exist anywhere at present. But if the intention were to bring sub-nations into existence, there could not be a better way of doing it than by putting together these differing elements in a linguistic province. An autonomous linguistic province, in other words, means an autonomous linguistic State and an autonomous linguistic State means, in the words of one of its exponents, that its territories are inviolate. And if in a linguistic province the majority language group comes to regard the territory of the entire province as exclusively its own, the time cannot be far distant when it will come to regard the minority living in that province and people living outside it as not their own. And once that stage is reached, it will only be a question of time for that sub-nation to consider itself a full nation.

128. The strength of the demand for linguistic provinces lies in the fact that there is some advantage in imparting education, in working the Legislature, and in administration if a large majority of the people speak the same language and in the fact that these linguistic groups do not seem to live happily in the existing provinces and are anxious to separate. The demand receives added force from the fact that several of the existing provinces more or less possess linguistic homogeneity. That one part of the country is linguistically homogeneous, including the small Province of Orissa, which has to be maintained by subvention from the Centre, is a source of constant irritation to linguistically heterogeneous provinces. It certainly does not lie in the mouth of those who are living in a linguistically homogeneous province to point out its evils to those living in a heterogeneous province. Moreover the formation of linguistic provinces has been an article of faith in the current political thought of the country during the last thirty years and has received the support of the Congress and the blessings of Mahatma Gandhi.

129. The weakness of the demand lies in the fact that it involves the recognition of the principle of government of a province by a linguistic group,

which is basically wrong. Further it paves the way for the recognition of other group governments for which there may exist a tendency in the country, for example, government by Southerners in the south of India, government by Sikhs and Jats in the north of India, and even government by the non-Brahmins in certain areas of this country. It leads to the breaking up or deterioration of vital organisms like capital cities and border districts where, for generations, a bilingual or multi-lingual life has flourished happily. It would further create minority problems and State problems of a kind which did not exist before. And, above all, it would bring into existence provinces with a sub-national bias at a time when nationalism is yet in its infancy and is not in a position to bear any strain. And, lastly, the motive behind the demand is open to serious challenge. It is not the ostensible ground of making democracy run smoother, but the fact that these several communities living in the province cannot get on together, that is behind the proposal to separate and form governments of their own.

130. The existing Indian provinces are administrative units of British imperialism. They came into existence in a somewhat haphazard way, and were not designed to work democratic institutions; they are certainly susceptible of more scientific and rational planning. But they have taken root and are now living vital organisms and have served the useful purpose of bringing together people who might otherwise have remained separated. And though they may be somewhat disadvantageous in working modern democracy, they are not bad instruments for submerging a sub-national consciousness and moulding a nation.

131. In any rational and scientific planning that may take place in regard to the provinces of India in the future, homogeneity of language alone cannot be decisive or even an important factor. Administrative convenience, history, geography, economy, culture, and many other matters will also have to be given due weight. It may be that the provinces thus formed will also show homogeneity of language and, in a way, might resemble linguistic provinces. But, in forming the provinces, the emphasis should be primarily on administrative convenience, and homogeneity of language will enter into consideration only as a matter of administrative convenience and not by its own independent force.

132. But this is certainly not the time for embarking upon the enterprise of redrawing the map of the whole of southern India, including the Deccan, Bombay, and the Central Provinces. India is yet to become a nation, and Indian States are yet to be integrated. The problem of regrouping the provinces would become simpler when the future of the remaining States is definitely known. Again, India can ill-spare at this moment and for some time to come the money, material, or administrative talent, which will be required for setting up half a dozen new governments and new capitals. It cannot afford to add to its anxieties the heat, controversy and bitterness,

which the demarcation of boundaries and allotment of the capital cities of Bombay and Madras will involve. And lastly by splitting three existing provinces into half a dozen the economy of almost half the country will be so seriously upset that it should not be attempted without a great deal of study, preparation and planning. However urgent the problem of redistribution of provinces may be, it is not more urgent than the defence problem, the inflation problem, the refugee problem, the food problem, the production problem, and many other problems with which India is burdened today. All these must get priority and the redistribution of provinces must wait till India has become a nation and has been fully integrated. If India lives, all her problems will be solved; if India does not survive, nothing will be gained by solving her linguistic provinces problem alone.

133. In order to secure this stability and integration, India should have a strong Centre and a national language. Indian nationalism is deeply wedded to its regional languages; Indian patriotism is aggressively attached to its provincial frontiers. If India is to survive, Indian nationalism and patriotism will have to sacrifice some of its cherished sentiments in the larger interests of the country. India has chosen for herself the destiny of a Federal Republic. In the Constitution, which is now being forged for her, framework may be set up, which would enable her to find her destiny. Provide, if you will, for autonomous provinces and for adult franchise; but also recognize that there will be a period of transition, a period of trial and error, during which India will have to prepare for its destiny and during which the Centre must possess large, over-riding powers of control and direction—powers which may be kept in reserve and may be sparingly used and finally abandoned, but which must be available for effective use if and when occasion arises.

134. Till nationalism has acquired sufficient strength to permit the formation of autonomous provinces, the true nature and function of a province under our Constitution should be that of an administrative unit functioning under delegated authority from the Centre and subject to the Centre's over-riding powers in regard to its territory, its existence, and its functions. These powers are required to form new provinces and to mitigate the rigour of Government by linguistic majorities, to prevent a breakdown of the administration on account of disputes amongst linguistic groups, to check fissiparous tendencies and strengthen national feeling, and above all to build up an Indian nation.

135. An immediate solution has, however, to be found for the desire for separation which exists among the Telugus, Malayalees, Kannadigas, and Maharashtrians. These linguistic groups are entitled to their legitimate share in the administration, government, and development of their provinces. Two of these linguistic groups, namely, Malayalees and Kannadigas, are situated at the tail-end of their provinces and represented by

ineffectual minorities in their Legislatures. Two others, namely, the Telugus and the Maharashtrians in C. P. & Berar, are represented by large, virile, and group-conscious minorities; but they are faced with equally group-conscious majorities and the two refuse to coalesce and produce a harmonious government. The clash and conflict which exists between them has brought the administration in Madras to a breaking point, and C. P. & Berar are also showing signs of going the same way. No particular grievance would seem to exist in the case of the Bombay-Maharashtra group.

136. A number of constitutional safeguards were suggested to us to prevent such breakdown. One commonly-favoured suggestion was that the Governor should always come from another province and should be selected by the Centre for his character and ability and armed with powers to prevent injustice to minorities, and charged with this duty in his Instrument of Instructions. Another suggestion was that provincial subjects should be reduced and joint subjects enlarged, and the Centre given residuary and over-riding powers. The third was that the government in these provinces should be run by turns by linguistic groups, or be divided into administrative regions, and that the Centre should impose conventions in regard to these matters under which the administration might be carried on. We have not considered in detail these and other similar suggestions made to us as it is not strictly within our province to do so. They all, however, lead to the inference that the Centre must be armed with over-riding powers and must assume responsibility to guide democracy till Indian nationalism has been sufficiently strengthened and democracy is able to stand on its own legs.

137. The only good that we can see in a linguistic province is the possible advantage it has in working the Legislature in the regional language. But this is more than counter-balanced by the obstruction the linguistic provinces will inevitably cause to the spread of national language or national feeling in the country. It is claimed—and the view is sincerely held—that the Telugu, Malayalee, Kannadiga, or Maharashtrian will be a better nationalist by being put in a linguistic province than without it. It is said that, by being put in a linguistic province, each linguistic group will be happier and stronger and will be able to develop according to its genius, and a stronger group will be able to serve India better and consequently will be a better nationalist. We are convinced that this is a mistaken view. The emotional response, which the sub-national sentiment will receive from a linguistic province, will always be greater than the one received by the national sentiment. The linguistic group, by being put into a linguistic province, may or may not become stronger; but it does not follow that by being stronger it will become more nationalistic in outlook. Nationalism and sub-nationalism are two emotional experiences which grow at the expense of each other. In a linguistic Province sub-nationalism will always be the dominant force and will always evoke greater

emotional response; and in a conflict between the two the nascent nationalism is sure to lose ground and will ultimately be submerged.

138. No doubt it is a fact that in some of the existing provinces linguistic homogeneity exists, and this is a source of constant irritation to the other linguistic groups who are living in heterogeneous provinces. As soon as India has been physically and emotionally integrated, the Indian State problem solved and the national sentiment strengthened, the scientific planning of the existing provinces of India can be taken in hand as far as practicable and this invidious distinction obliterated; but till then it has to be accepted as an accident of history and all sub-national tendencies in the existing linguistic provinces should be suppressed.

139. It is true that these linguistic groups, who are clamouring for separate provinces, are not happy in their present surroundings and the friction and differences which subsist between them, constitute a serious threat to good government. This has already become a major administrative problem. But the mere fact that two large communities cannot get on together is no valid reason for breaking up a province even when these communities are numerically large enough, economically strong enough, and geographically contiguous enough to form provinces of their own. The principle underlying this separation would be so dangerous in its application to the rest of India that the strongest advocates of linguistic provinces have been compelled not to base their demand on this ground which is really at the back of their minds, but to make it on other ostensible grounds like benefit to democracy or preservation and development of their language and culture. Not only the groups, whose cases we are considering, but many other linguistic groups in so-called homogeneous provinces, as also many other communal groups, who have as strong an individuality as these linguistic groups possess, are not happy in their present surroundings. And if once this principle is recognized, it will set the ball rolling for the disintegration of the entire country. And we do not think that the case is any further advanced by the fact that these groups are not only discontented groups but also linguistic groups.

140. It is said that Congress pledges are behind this demand, and that the Congress has formed its provinces on a linguistic basis, that the present political leadership of the country is committed to it, that the desire for these provinces has sunk deep down into the masses, and that, if it is now delayed or denied, it will cause serious discontent. There may be some truth in all this, but we trust that the political leadership in the country will rise to the occasion and guide the country to its duty. The Congress did not form its provinces on a linguistic basis alone, and so far as we are aware, has not committed itself to any time limit in regard to the formation of these provinces, unless it be that the time-limit intended by the Congress was the attainment of Swaraj. But freedom has come to us in a way unforeseen and unthought-of and has brought in its train problems

and dangers never dreamt of. In view of the dangers which now surround our country, and in the circumstances that now exist, the Congress stands relieved of all past commitments and it is its right as also its duty to come to a fresh decision on the subject in the light of the present circumstances.

141. The caste system and sectional and group interests stir up some of the deepest emotions in the Indian heart. Those patriotic persons, who fought the battle of freedom under the banner of the Congress and who are now agitating for separate provinces, share the sentiments of their countrymen. They find it difficult to understand how they will become less national-minded and less patriotic by harbouring sentiments, which they had cherished all along and for which a linguistic province is a natural expression, when these very sentiments did not stand in the way of their uniting and making immense sacrifices for the cause of Indian freedom in the struggle against British imperialism. They do not realize that nationalism born under the stress of foreign domination or of the fear of external aggression cannot stand the strain of normal times unless there is some deeper unity to support it when the stresses which have brought it into being disappear. History is replete with examples of great movements born of a sudden surge of feeling meeting with disaster when the moving stimulus was withdrawn. And Indian unity and Indian nationalism, which are yet in their infancy, will not be able to bear the strain of normal times, unless the mass psychology undergoes a radical change and ceases to think in terms of 'mine' and 'thine' in so far as the nation and the State are concerned. If India is to live, there simply cannot be an autonomous State anywhere in India for any group, linguistic or otherwise; and no sub-national province can be formed without preparing the way for ultimate disaster.

142. So clear is the force of logic with which the case of Indian nationalism presents itself to an unprejudiced mind, and at the same time so keen is the desire for linguistic provinces in certain areas that all sensible advocates of such provinces are even prepared to abandon provincial autonomy and accept a unitary government for India. All the best evidence presented before us is unanimous regarding a strong Centre with over-riding powers and a compulsory national and official language to be enforced by statute. If India decides that the existing linguistic provinces should be retained and others formed in the future, it must prepare itself for a unitary government at least for the period of transition. And the Constitution should provide for a gradual devolution of power to provinces with full autonomy only when Indian nationalism has been sufficiently strengthened. This is the least margin of safety under which these linguistic provinces can be permitted to function.

143. This inquiry in some ways has been an eye opener to us. The work of sixty years of the Indian National Congress was standing before us face to face with centuries-old India of narrow loyalties, petty jealousies, and

ignorant prejudices engaged in a mortal conflict, and we were simply horrified to see how thin was the ice upon which we were skating. Some of the ablest men in the country came before us and confidently and emphatically stated that language in this country stood for and represented the culture, tradition, race, history, individuality, and, finally, a sub-nation, that the government of a linguistic group could not be safely left in the hands of a multi-lingual group; and that each linguistic group must have a territory of its own and that its territory was inviolate and could not be shared by any other linguistic group. And it is fair to state that these were not individual views, but the views of a great many of our countrymen. The bitter dispute which rages between Tamils and Telugus in regard to the City of Madras and, in a greater degree, between the Marathas and Gujaratis about the City of Bombay, reveals a mentality which to our mind will be the death-knell of Indian nationalism.

144. The basic facts of the Indian situation are well-known and well settled, and are not in dispute on either side. India can only live by the strength of its nationalism; Indian nationalism must find its expression in democracy and not in a kind of fascism; that democracy in this country can only function through a Federation as an absolute unitary government for such a vast country is neither desirable nor practicable; and a Federation requires contented and happy units and some measure of autonomy for these units.

145. Our masses have been exploited and have long been suffering and their relief is overdue; and they are entitled immediately to the widest possible education and the widest possible franchise; and all these objectives have to be achieved within the framework of a society, which is caste-ridden, group-conscious, and in the grip of reactionary vested interests, religious and secular. So far there is no dispute. The dispute arises in marking out the spheres within which the nationalism of the country and its reactionary tendencies have to find an outlet.

146. These linguistic provinces make a strong appeal to the imagination of many of our countrymen and there exists a large volume of public support in their favour. Indeed, in the Coastal districts of Andhra, the demand has become, in the words of one of its leading advocates, "a passion and has ceased to be a matter of reason"; and the heat and passion and controversy, which gathered round the work of this Commission and which we witnessed during the course of our work, are in themselves a proof of the intensity of feeling which exists on this subject. The non-fulfilment of a demand of this nature may easily lead to a sense of frustration, and there is grave risk in turning it down; and such a risk can only be justified in the interests of national emergency.

147. In our opinion, however, such an emergency exists at present in this country. The first and last need of India at the present moment is that it should be made a nation. The Constitution which is now being

forged for India, as also all the multifarious problems which clamour for an immediate solution, have got to be considered in relation to this paramount necessity. Everything which helps the growth of nationalism has to go forward, and everything which throws obstacles in its way has to be rejected or should stand over. We have applied this test to linguistic provinces also, and judged by this test, in our opinion, they fail and cannot be supported.

148. It has given us no pleasure to come to a decision which runs counter to the cherished desires of so many countrymen of ours in Andhra, Kerala, Karnataka and Maharashtra. Throughout this inquiry a strong and able opinion has ranged itself against the formation of these linguistic provinces outside the areas in which the demand was put forward. This opinion proceeded from persons in all walks of life, including some of our ablest administrators and most distinguished countrymen. The case against the formation of linguistic provinces and the arguments by which it was supported have been adverted to in an earlier portion of this Report. If it were possible to decide the question of formation of linguistic provinces with reference to the wishes of the people who want these provinces alone, we should have been prepared to gratify their wishes. We do not think, however, that a question of such national importance can be decided with reference to such wishes without taking into account the repercussions which they would have on the country as a whole. And, judging that way, we have come to the conclusion, reluctantly but definitely, that the case against linguistic provinces is the sounder of the two.

149. But this finding does not dispose of the administrative problems, which already exist, having regard to the mutual relations of these linguistic groups, nor does it in any way militate against the formation of administrative provinces out of these linguistic areas should such provinces be decided upon in future on purely administrative considerations.

150. An urgent case, however, exists for adjusting the relation of the various linguistic groups in the government of the existing provinces. Two of these linguistic groups, Kerala and Karnataka, being situated at the tail end of their provinces and represented by ineffective minorities, have undoubtedly suffered in their development. There can be no doubt that they would prosper and be able to manage their affairs much better under their own government nearer home if such a government were possible. The cases of Andhra and C. P. Maharashtra are more complicated and have a political colouring. The clash and conflict, which strain the relations between Telugus and Tamils in Madras, are a serious handicap to the efficient administration of that Province. And this is also true, though in a much lesser degree, of the relations between Mahavidarbha and Mahakoshal in the Province of C. P. and Berar.

151. The evidence placed before us does not lead to the conclusion that the existing Provinces of Madras, Bombay, C. P. & Berar are

administratively inconvenient or that their reformation on administrative grounds is immediately necessary and cannot wait. But it is not unlikely that when Indian States have aligned themselves with Indian provinces and India has been physically and emotionally integrated and has stabilized itself some of the existing Indian provinces may have to be reformed. In any rational and scientific planning, which may then take place, the natural place of Malabar will be with Cochin and Travancore and of the Union Karnataka with Mysore and their problems will be automatically solved. In such a planning it may not be generally necessary to break up the bilingual border districts and they may be disposed of on their individual economic and historical affinities and capital cities like Bombay and Madras should receive special treatment, which their interest and the larger interests of the nation may demand. Subject to the above and other relevant considerations, if reformed, provinces present features of linguistic homogeneity also that will be an additional advantage. If the government of the day should decide to reform these provinces, an attempt should be made to secure the agreement of the parties concerned, which alone would ensure future harmonious relations.

152. Our conclusions, therefore, are:

- (1) The formation of provinces on exclusively or even mainly linguistic considerations is not in the larger interests of the Indian nation and should not be taken in hand.
- (2) The existing Provinces of Madras, Bombay, C. P. and Berar present serious administrative problems for which an administrative solution is urgently necessary and it is for the Centre to find a satisfactory solution of these problems.
- (3) The aforesaid problems do not call for an immediate reformation of provinces. As soon as Indian States have been integrated and the country has stabilized itself and other conditions are favourable they may be reformed and convenient administrative Provinces set up.
- (4) In the formation of new provinces, whenever such a work is taken in hand, oneness of language may be one of the factors to be taken into consideration along with others; but it should not be the decisive or even the main factor. Generally speaking, bilingual districts in border areas, which have developed an economic and organic life of their own, should not be broken up and should be disposed of on considerations of their own special needs. Similarly, the cities of Bombay and Madras should receive special treatment and be disposed of in the best interests of India as a whole and in their own interest. Subject to the above and other relevant and paramount considerations, if some new provinces come into being and produce more or less linguistic homogeneity they need not be objected to.
- (5) If any powers are necessary for the Centre for a proper solution of

the administrative problems in the provinces the Constitution should provide for them.

153. We find that no new provinces out of those referred to us should be formed for the present; and, in view of this finding, the other questions referred to us do not arise and need no answer.

154. Our Associate Members have given us invaluable help in selecting witnesses, in bringing out points for and against during the examination of witnesses and in advising us generally in matters with which they were familiar and which were new to us. We gratefully acknowledge the help which we have received from them.

155. Next, we desire to express our warm thanks to our Secretary, Shri B. C. Banerji, M.A., I.A. & A.S., specially for the pains he has taken in examining the financial position of the proposed new provinces, which he has described in Chapter III. His experience as a senior Accountant-General has been of great value and help to the Commission.

156. Lastly, we have to record our thanks to the Secretariat of the Constituent Assembly for making available to us a great deal of material which they had collected, for the excellent staff which they placed at our disposal, and for the willing co-operation which they extended to us throughout our inquiry.

S. K. DAR,
Chairman.

B. C. BANERJI,
Secretary.

PANNA LALI }
JAGATNARAIN LAL } *Members.*

New Delhi, the 10th December, 1948.

APPENDIX I

(I) RECOMMENDATION OF THE DRAFTING COMMITTEE

The committee has anxiously considered the question whether Andhra should be specifically mentioned as a separate State in this Schedule. There was recently a statement by the Government on this subject, in which it was said that Andhra could be included among the Provinces in the Constitution as was done in the case of Orissa and Sind under the Government of India Act, 1935. Accordingly the committee was at one stage inclined to mention Andhra as a distinct State in the Schedule. On fuller consideration, however, the committee feels that the bare mention of the State in the Schedule will not suffice to bring it into being from the commencement of the new Constitution. Preparatory steps will have to be taken immediately under the present Constitution in order that the new State, with all the machinery of government, may be in being from the commencement of the new Constitution. This was what was done in the case of Orissa and Sind under the Act of 1935; they were made into separate Provinces with effect from April 1, 1936, while the Act came into operation on April 1, 1937. The committee therefore recommends that a Commission should be appointed to work or inquire into all

relevant matters *not only as regards Andhra but also as regards other linguistic regions*, with instructions to submit its report in time to enable any new States whose formation it may recommend to be created under section 290 of the Act of 1935 and to be mentioned in this Schedule before the Constitution is finally adopted.

(II) CONSTITUENT ASSEMBLY OF INDIA

The Secretariat of the Constituent Assembly of India has issued the following Press communique :

The question of the formation of certain new provinces has been engaging public attention for some time. The Drafting Committee appointed by the Constituent Assembly of India recommended that a Commission should be appointed to enquire into and work out all relevant matters in connection with the formation of such provinces with instructions to submit their report in time to enable the new States, whose formation such Commission may recommend to be created under section 290 of the Government of India Act, 1935, as adapted, and to be mentioned thereafter in the First Schedule to the Draft Constitution before the Constitution is finally adopted.

2. The President of the Constituent Assembly has accordingly been pleased to appoint the following Commission to examine and report on the formation of new Provinces of Andhra, Karnataka, Kerala and Maharashtra and on the administrative, financial and other consequences of the creation of such new Provinces. With the Commission will be associated the following Associate Members who will share freely in the proceedings of the Commission in so far as they are concerned but will not take part in drafting or signing the report:

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| 1. Shri S. K. Dar (Retired Judge, Allahabad High Court) | . . . | <i>Chairman</i> |
| 2. Dr. Panikar Lall, C.S.I., C.I.E. (Retired Member of the Indian Civil Service) | . . . | } <i>Member</i> |
| 3. Shri Jagat Narain Lal (Member, Constituent Assembly of India) | . . . | |
| 4. Shri B. C. Banerjee (Accountant-General, Bihar) | . . . | <i>Secretary</i> |

Associate Members

	LINGUISTIC AREA REPRESENTED
FROM MADRAS—	
1. The Hon'ble Shri Ramakrishna Raju (President, Madras Legislative Council).	Andhra.
2. Shri T. A. Ramalingam Chettiar (Member, Constituent Assembly of India)	Tamil-Nad.
3. Shri Narayana Menon of Palghat (Member, Madras Legislative Council).	Kerala.
4. Shri Tokuri Subramanyam of Bellary	Karnataka.
FROM BOMBAY—	
1. Shri K. M. Munshi (Member, Constituent Assembly of India).	Gujarat.
2. Shri R. R. Diwakar (Member, Constituent Assembly of India).	Karnataka.
3. Shri H. V. Pataskar (Member, Constituent Assembly of India).	Maharashtra.
FROM THE CENTRAL PROVINCES & BERAR—	
1. Shri T. L. Sheode (Retired Judge, Nagpur High Court).	Maharashtra.
2. Shri Gopilal Shrivastava (Advocate, Saugor).	Mahakoshal (Hindi-speaking areas).

3. The terms of reference to the Commission are as follows :

- (1) What new provinces, if any, from among those specified in paragraph 2 above should be created and what broadly should be their boundaries, it being understood that the precise demarcation of the boundaries would be considered later by a Boundary Commission?
- (2) What should be the administrative, economic, financial and other consequences in each province to be so created?
- (3) What would be the administrative, economic, financial and other consequences in the adjoining territories of India?

APPENDIX II

CONSTITUENT ASSEMBLY OF INDIA

LINGUISTIC PROVINCES COMMISSION

Questionnaire regarding the proposed Provinces of Andhra, Karnataka, Kerala and Maharashtra

PART I

1. Should Andhra, Karnataka, Kerala or Maharashtra be constituted into a separate Province on a linguistic basis?

2. What should be the boundary of the new Province? Please mention the districts and taluks which you would wish to be included in the new Province and give reasons in support of your opinion.

3. Should the new Province be constituted into a full-fledged Governor's Province with a Council of Ministers, a Legislature, a High Court, an Advocate-General, a Public Services Commission and an Auditor-in-Chief?

4. What do you think of the alternative scheme of constituting the proposed Province into a sub-province of an existing Province with autonomous administrative machinery of its own?

5. Should the new Province have a separate administrative machinery for all the Government Departments, or should it have joint administration for any of the Departments with a neighbouring Province? Under this head the following subjects may be considered:

- (1) Justice, (2) Police, (3) Public Works, (4) Medical and Public Health, (5) Higher Education, and (6) Forest.

6. What should be the strength of the Council of Ministers? What pay and allowances would you recommend for each Minister?

7. Should the Legislature of the new Province be unicameral or bicameral and what should be the salary of its members?

8. How many judges should the High Court have besides the Chief Justice?

9. How many members should the Public Services Commission have including the Chairman and what should be their salary?

10. Should the new Province have a University of its own? If so, should it have an honorary Vice-Chancellor or a salaried one and, in the latter case, what should be his salary?

11. Should there be a head for each Department of Government (including the Board of Revenue) or would you like to have more Departments than one placed under one controlling officer? Indicate the heads of Departments which you would propose for the Province and the salary that you would allow to each.

12. What scales of pay would you propose for the various Services?
13. If you find it convenient, please prepare rough estimates of income and expenditure of the new Province under the various major heads.
14. If, according to your estimates, the probable revenues of the new Province are not sufficient to meet the expenditure and the new Province is faced with a recurring deficit, how would you propose to meet the deficit? What steps would you recommend for increasing the revenues of the Province? Would you suggest fresh taxation? If so, please give details.
15. Do you contemplate the merger of any Indian States in your Province? If so, which and why? Has the opinion of the people of those States been ascertained to be in favour of the merger? Suppose the States do not wish to join your Province, would you still have the new Province created?
16. Where should the seat of Government of the new Province be located? How would you meet the cost of the creation of the new capital?
17. What would be the economic consequences of the creation of the new Province? Under this head the following subjects may be considered:
 (1) Agriculture, (2) Industry, (3) Forest, (4) Minerals, (5) Trade and Commerce, (6) Economic Development, (7) Public Health, and (8) General prosperity of the people.
18. What in your opinion should be the basic principle or principles for the division of assets and liabilities?
19. Do you think the creation of the new Province will lead to a large-scale transference of population and consequent human suffering? If you do, what steps would you suggest for its prevention?
20. Have you any proposals to make regarding the cities of Bombay and Madras (including the ports and suburbs)? Do you think they should be included in any Province; if so, which? Would you favour the formation of these cities into separate Provinces or sub-Provinces? If so, please give facts and figures in justification of your viewpoint.

PART II

(For Tamil-Nad, Gujarat and Hindi C.P.)

21. Do you agree to the carving out of the proposed new Provinces of Andhra, Karnataka, Kerala and Maharashtra?
22. What effects, administrative, financial and economic, are likely to be produced on the remaining parts of the existing Provinces after the new Provinces have been formed out of them?
23. Please prepare rough estimates of income and expenditure under the various major heads for those parts of the existing Provinces which would remain after the creation of the new Provinces.

N.B.—Replies to this questionnaire should reach the Secretary of the Linguistic Provinces Commission, Constituent Assembly of India, Council House, New Delhi, by the 16th August, 1948.

APPENDIX III

SRI BAGH PACT

As approved by the Andhra Provincial Congress Committee

University: This Committee is of opinion that the two university centres are to

be developed under the Andhra University, one at Waltair and the other at Anantapur so as to distribute the centres of culture over Andhradesa, and create opportunities for social and cultural intercourse amongst the Andhras and locate colleges in areas favourable to the subjects dealt with.

Irrigation : That to ensure the rapid development of the agricultural and economic interests of Rayalaseema and Nellore to the level of those in the Coastal districts, schemes of irrigation should, for a period of ten years or such longer period as conditions may necessitate, be given a preferential claim specially in respect of the utilization of the waters of Thungabhadra, Krishna and Pennar giving for ten years exclusive attention in respect of major projects beneficial to these areas.

That whenever the question of sharing waters arises the needs of the aforesaid areas be the first met and that this policy be implemented as from today in the administration of the province.

Legislature : That in the matter of general seats in the Legislature the distribution shall be generally on an equal district basis.

It is agreed that the location of the University, the headquarters and the High Court may advantageously be in different places so as not to concentrate all civic importance at the same centre.

Accordingly it is agreed that while the University may continue to be where it is, the High Court and the metropolis be located in suitable places in the Coastal districts and the Rayalaseema, the choice being given to the Rayalaseema.

It shall, however, be open to vary these terms by common consent.

APPENDIX IV

THE AKOLA PACT

It is agreed that there shall be one Province of United Maharashtra (Samyukt Maharashtra) with sub-provinces for the Marathi-speaking areas, Central Provinces and Berar, commonly styled Mahavidarbha, and West Maharashtra, with separate Legislatures and Cabinets for the sub-Provinces and with specified subjects under their jurisdiction. The Province shall have the right to create other sub-provincial units whenever found necessary and feasible. There shall be one Governor and one Deputy Governor for the whole Province elected by the whole province and a provincial Cabinet and Legislature dealing with the provincial subjects. The provincial Legislature shall be composed of representatives of the people on the basis of population. The elections to the sub-provincial Legislatures shall be held separately. Two High Courts shall function independently for the two sub-Provinces except for a common tribunal set up for specific jurisdiction. There shall be a common Public Services Commission for the whole Province.

Shankarrao Deo

M. S. Aney

P. S. Deshmukh

Srimannarayan Agrawal

D. V. Gokhale

Brijlal Biyani

Datto Waman Potdar

G. T. Madkholkar

S. K. Wankhede

Pandharinath Patil

P. Raka

Ramrao Deshmukh
D. R. Gadgil
Gopalrao Khedkar
Pramila Oke
G. R. Kulkarni

In case it becomes impossible on account of any circumstances to create a Province of United Maharashtra in the manner outlined in the accompanying agreement, it is agreed that all efforts should be made for the formation of a separate Province of Mahavidarbha.

AKOLA,
8th August, 1947.

SHANKARRAO DEO.
BRJLAL BIYANI.

APPENDIX V

TABLE I

Indian Provinces, Unions and some States with their areas, population and revenues

PROVINCES

	Area in Sq. Miles	Population (In lakhs)	Revenue (In lakhs of rupees)
Madras	1,26,166	4,93·42	5,519·17
Bombay	76,443	2,08·50	4,349·45
Bengal	27,748	2,12·11	1,888·26
U. P.	1,06,247	5,50·21	3,935·81
Punjab	37,058	1,26·17	682·38
Bihar	69,745	3,63·40	1,793·39
C. P. & Berar	98,575	1,68·14	1,240·41
Orissa	32,198	87·28	649·67
Assam	50,296	74·71	696·65

UNIONS

	Area in Sq. Miles	Population (In lakhs)	Revenue (In lakhs of rupees)
Saurashtra (217 States)	31,885	35·22	800·00
The United State of Matsya (4 States)	7,536	18·38	183·06
The United State of Vindhya Pradesh (35 States).	24,610	35·69	243·30
The United State of Rajasthan (10 States).	29,977	42·61	316·67
Gwalior-Indore Union (20 States)	46,273	71·50	776·42
Patiala and East Punjab Union (8 States).	10,119	34·24	500·00

STATES

	Area in Sq. Miles	Population	Revenue (In lakhs of rupees)
Baroda	8,235	2,855,010	395.00
Hyderabad	82,313	16,338,534	2,463.10
Jammu & Kashmir	84,471	4,021,616	386.65
Mysore	29,458	7,329,140	1,176.82
Travancore	7,662	6,070,018	611.25
Bikaner	23,181	1,292,938	222.77
Cochin	1,493	1,422,875	266.57
Jaipur	15,610	3,040,876	303.00
Jodhpur	36,120	2,555,904	224.34

TABLE II

Claimed Linguistic Units, Their Area, Population and Revenue

Unit	Area in Sq. Miles	Population	Revenue (In lakhs of rupees)
Andhra	67,025	1,87,84,304	1,207
Kerala	5,790	39,29,425	332
Karnataka—			
4 Dts. of Bombay	22,813	53,67,099	424
1 Dt. of Madras			
Maharashtra, Bombay & C.P.	83,968	1,81,93,208	1,582
Tamil-Nad	49,276	2,43,27,084	1,848
Gujarat	10,389	40,92,713	516
Mahakoshal	61,710	97,92,890	509
Maharashtra Bombay 10 Dts.	47,103	1,11,72,514	934
Mahavidarbha C. P. 8 Dts.	36,865	70,20,694	647
Madras City	30	7,77,481	460
Bombay City	30	14,89,883	1,320

FINANCIAL APPENDIX

Statement I—Statement of Revenue and Expenditure

A—Andhra.

B—Kerala.

C—Karnataka.

D—Maharashtra.

Statement II—Statement of Revenue and Expenditure by Major Heads of Account

A—Andhra.

B—Kerala.

C—Karnataka.

D—Maharashtra.

Statement III—Statement of Assets and Liabilities as on 31-3-1949

(i) Madras Presidency.

(ii) Bombay Presidency.

(iii) C. P. & Berar (Not received).

STATEMENT I

Statement* of Revenue and Expenditure

A—ANDHRA

District	Revenue				Expenditure			
	1945-46	1946-47	1947-48	Average	1945-46	1946-47	1947-48	Average
1. Vizagapatam	1,74.70	1,88.67	2,25.34	1,96.24	1,43.29	1,76.19	1,85.22	1,68.23
2. Godavari East	1,89.80	2,13.23	2,46.60	2,16.54	1,05.84	1,27.41	1,41.89	1,25.05
3. Godavari West	1,19.35	1,60.57	1,68.88	1,49.60	68.76	78.53	93.94	80.41
4. Kistna	1,62.97	1,90.92	1,92.97	1,82.29	79.65	93.34	1,05.71	92.90
5. Guntur	1,74.83	2,01.63	1,76.03	1,84.16	1,03.97	1,26.27	1,39.97	1,23.40
6. Nellore	85.13	89.25	79.73	84.71	72.44	94.19	95.82	87.48
7. Cuddapah	53.90	53.06	44.90	50.62	52.99	66.45	68.85	62.76
8. Anantapur	69.63	60.04	46.02	58.56	58.25	88.71	74.71	73.89
9. Bellary	82.28	72.45	59.06	71.26	67.04	84.38	84.29	78.57
10. Kurnool	92.88	73.07	58.85	74.93	61.09	73.45	77.61	70.72
11. Chittoor	67.04	61.67	45.09	57.93	59.46	92.67	79.52	77.22
TOTAL	12,72.51	13,64.56	13,43.47	13,26.84	8,72.78	11,01.59	11,47.53	10,40.63

*This does not take into account Receipts and Expenditure in Forest, P. W. & Electricity Divisions & Andhra's share of unallocated items of Revenue and Expenditure.

B—KERALA

	Revenue			Expenditure		
	1945-46	1946-47	1947-48 Average	1945-46	1946-47	1947-48 Average
	316.01	362.78	364.56	285.46	464.16	408.15
			347.78		385.92	

C—KARNATAKA

District	Revenue			Expenditure		
	1945-46	1946-47	1947-48 Average	1945-46	1946-47	1947-48 Average
<i>Bombay Presidency</i> —						
1. Belgaum	43,73,531	32,63,112	88,19,900	54,85,514	80,88,829	1,14,48,592
2. Bijapur	27,74,547	25,23,578	57,46,500	36,81,542	85,71,580	1,15,56,954
3. Dharwar	42,03,379	33,08,220	80,60,000	51,90,533	90,62,253	1,21,82,980
4. Kanara	16,92,248	22,98,034	26,95,100	22,28,461	48,21,920	59,03,302
<i>Madras Presidency</i> —						
5. South Kanara	1,19,89,783	1,35,10,155	1,09,44,005	1,21,47,981	72,94,462	84,75,507
TOTAL	2,50,33,488	2,49,03,099	3,62,65,505	2,87,34,031	3,78,39,044	4,95,67,335
					5,84,90,019	4,86,332,135

Note: This statement does not include Receipts and Expenditure from Forests. Revenue and Expenditure from Provincial Excise have not been included in the figures for 1945-46 and 1946-47.

D—(I) 10 DISTRICTS OF BOMBAY MAHARASHTRA

<i>Revenue</i>						
S. No.	District	1945-46	1946-47	1947-48	Average	
1	Thana	53,55,941	43,96,177	1,03,51,700	67,01,273	
2	Ahmednagar	30,86,324	37,18,928	74,27,000	47,44,084	
3	E. Khandesh	30,70,504	63,20,430	1,03,01,500	65,64,145	
4	W. Khandesh	24,22,395	41,21,455	67,63,300	44,35,717	
5	Nasik	50,96,969	45,94,798	97,25,100	64,72,289	
6	Poona	1,00,17,911	1,08,05,321	1,60,24,500	1,56,15,911	
7	Satara	30,91,122	38,35,961	73,81,100	47,69,394	
8	Sholapur	33,73,060	36,63,295	97,52,600	55,96,318	
9	Ratnagiri	19,69,179	24,29,540	47,18,700	30,39,139	
10	Kolaba	13,65,272	14,67,312	46,95,700	25,09,428	
GRAND TOTAL . .		3,88,48,677	4,53,53,217	9,71,41,200	6,04,47,698	
11	Bombay City (including Bombay Suburbs).	6,56,06,163	6,62,30,034	13,22,82,700	8,80,39,632	
GRAND TOTAL . .		10,44,54,840	11,15,83,251	22,94,23,900	14,84,87,330	

Note : The Statement does not include Receipts and Expenditure for Forests. Revenue and Expenditure from Provincial Excise have not been included in the figures for 1945-46 and 1946-47.

<i>Expenditure</i>					
S. No.	District	1945-46	1946-47	1947-48	Average
1	Thana	1,68,37,586	1,12,10,428	1,40,21,800	1,40,23,271
2	Ahmednagar	67,92,105	1,02,22,873	1,29,16,900	99,77,293
3	E. Khandesh	84,14,821	58,59,743	1,48,59,500	97,11,355
4	W. Khandesh	47,50,237	58,73,717	1,14,64,618	73,62,857
5	Nasik	77,04,222	90,45,798	1,48,41,600	1,05,30,540
6	Poona	2,54,01,842	2,75,57,027	4,11,96,800	3,13,85,223
7	Satara	91,30,414	80,31,368	1,40,44,300	1,04,02,027
8	Sholapur	69,43,705	67,79,261	1,25,88,200	87,70,389
9	Ratnagiri	63,32,571	75,23,709	1,30,19,200	89,58,493
10	Kolaba	20,77,827	31,48,018	62,53,400	38,26,415
GRAND TOTAL . .		9,43,85,331	9,52,51,942	15,52,06,318	11,49,47,863
11	Bombay City (including Bombay Suburbs).	5,52,36,759	7,84,58,077	7,64,07,400	7,00,34,079
GRAND TOTAL . .		14,96,22,090	17,37,10,019	23,16,13,718	18,49,81,942

Note : The Statement does not include Receipts and Expenditure for Forests. Revenue and Expenditure from Provincial Excise have not been included in the figures for 1945-46 and 1946-47.

(II) 8 DISTRICTS OF C. P. MAHARASHTRA

**Revenue*

District	1945-46	1946-47	1947-48	Average
1. Akola	60,17,693	60,27,934	63,96,017	61,47,215
2. Amroati	84,17,515	86,62,031	77,76,668	82,85,405
3. Buldana	51,80,008	53,90,854	56,61,536	54,10,799
4. Yeotmal	42,43,074	45,38,488	47,47,515	45,09,692
5. Bhandara	52,45,969	53,88,786	49,09,835	51,81,530
6. Chanda	39,47,128	57,27,479	60,99,043	52,57,883
7. Nagpur	1,30,18,280	1,20,26,561	1,37,98,609	1,29,47,817
8. Wardha	16,91,400	18,41,847	18,41,847	17,91,698
TOTAL .	4,77,61,067	4,96,03,980	5,12,31,070	4,95,32,039

*Based on the figures supplied by the Accountant General, C.P., and does not include Taxes on Income. Extraordinary Receipts, and miscellaneous adjustments.

Expenditure

District	1945-46	1946-47	1947-48	Average
1. Akola	46,20,824	61,30,517	72,42,484	59,97,942
2. Amroati	61,68,380	74,12,786	85,46,241	73,75,802
3. Buldana	25,85,034	32,58,831	39,70,499	32,71,455
4. Yeotmal	24,90,011	28,44,439	33,40,887	28,91,779
5. Bhandara	17,49,583	22,38,171	27,23,275	22,37,010
6. Chanda	33,87,689	35,75,677	39,01,268	36,21,545
7. Nagpur	4,64,98,106	4,52,50,622	3,12,58,228	4,10,02,319
8. Wardha	12,42,443	17,25,658	20,79,374	16,82,492
TOTAL .	6,87,42,070	7,24,36,701	6,30,62,256	6,80,80,344

STATEMENT II

Statement of Revenue and Expenditure by Major Heads of Account

A—ANDHRA

Revenue

Year	VII Land Revenue	VIII Pro. Excise	IX Stamps	X Forests	XI Registra- tion	XII Receipts from M.V. Accts.	XIII Other taxes and duties	XLI Receipts from elec.	Other heads	Total	
1945-46	. . .	323.83	560.01	119.13	45.87	21.04	23.50	182.07	11.89	252.91	1540.25
1946-47	. . .	261.95	501.70	137.14	35.40	22.90	34.54	208.68	13.22	502.60	1718.11
1947-48	. . .	358.75	418.37	104.80	55.50	24.62	44.86	250.41	15.32	430.37	1703.00

Expenditure

	25 Gen. Admn.	27 Admn. of Justice	28 Jails	29 Police	37 Educa- tion	38 Medical and 39 P. H.	40 Agri. 41 Vety. 42 Co-op.	43 Industries	55 Pensions	Other heads	Total	
1945-46	. .	186.57	48.13	16.96	103.75	176.34	90.96	61.88	12.72	47.17	460.01	1204.49
1946-47	. .	245.39	53.71	17.83	137.62	227.41	116.55	66.84	29.03	48.96	1201.30	2144.64
1947-48	. .	240.93	55.35	22.86	165.24	266.93	165.73	80.16	27.45	54.57	626.12	1705.34

B—KERALA

Revenue

	VII Land Revenue	VIII Provincial Excise	IX Stamps	X Forests	XI Registra- tion	XII Receipts from M. V. Accts.	XIII Other taxes and duties	XLI Receipts from elec. schemes	Other heads	Total
1945-46	46.82	65.87	27.93	27.12	7.62	8.69	62.98	..	316.01
1946-47	23.57	77.55	22.91	33.38	7.65	10.90	73.84	..	362.78
1947-48	47.85	41.00	13.32	39.99	7.79	15.00	80.42	..	364.56

Expenditure

	25 Gen. Admn.	27 Admn. of Justice	28 Jails	29 Police	37 Educa- tion	38 Medical and 39 P.H.	40 Agri. 41 Vety. 42 Co-op.	43 Indus- tries	55 Pensions	Other heads	Total
1945-46	19.79	12.50	3.62	25.26	64.69	19.01	5.32	21.22	14.94	285.46
1946-47	15.63	13.62	3.96	27.09	84.04	25.34	14.50	14.52	16.23	464.16
1947-48	32.17	13.38	4.76	32.34	110.42	34.62	11.62	26.88	18.32	408.15

C—KARNATAKA

Receipts

(In lakhs of rupees)

Year	VII Land Revenue	VIII Provincial Excise	IX Stamps	XI Forests	XII Receipts under Motor Vehicles	XIII Other Taxes & duties	XXIX Agriculture heads	Total
1945-46	.	.	.	Not shown	7.30	23.32	7.23	127.79
1946-47	.	.	31.18	„	10.96	27.24	6.67	269.93
1947-48	.	86.91	32.97	78.01	14.39	53.06	13.01	440.64

Expenditure

(In lakhs of rupees)

Year	10 Forest	25 Genl. Admn.	27 Justice	29 Police	37 Education	38 Medical	40 Agri- culture	50 Civil works	55 Super- annuation etc.	Other heads	Total
1945-46	.	43.28	15.09	36.85	65.65	8.8	61.18	44.51	20.86	85.35	381.58
1946-47	.	59.37	16.07	56.86	99.68	10.01	60.96	41.60	21.67	128.41	494.63
1947-48	.	70.13	18.80	70.21	134.36	28.26	40.62	47.42	22.27	152.81	638.99

D—(i) MAHARASHTRA (BOMBAY PORTION)
(including Bombay City)

Receipts

Year	VII Land Revenue	VIII Provincial Excise	IX Stamps	X Forests	XIII Other Taxes & Duties	Other heads	Total
1945-46	144-09	Not supplied	171-83	Not Supplied	362-01	366-60	10,44-53
1946-47	195-04	"	233-56	"	321-84	365-38	11,15-82
1947-48	230-24	605-54	280-81	119-20	730-74	327-70	22,94-23

Expenditure

Year	10 Forests	25 Genl. Admn.	27 Admn. of Justice	29 Police	37 Edu- cation	38 Medical	40 Agri- culture	50 Civil works	55 Super- annuation etc.	Other heads	Total
1945-46	Not supplied	128-07	58-94	215-91	175-33	81-56	91-02	233-23	85-04	427-08	1496-18
1946-47	"	153-41	62-25	386-34	104-37	88-35	110-68	143-01	77-03	611-61	1737-05
1947-48	41-11	153-17	68-35	396-64	378-87	113-52	221-31	159-46	80-79	743-98	2317-20

(II) C. P. MAHARASHTRA

Revenue

	VII Land Revenue	VIII Excise	IX Stamps]	X Forests	XIII Other Taxes and Duties	XXIII Police	Other heads	Total
1945-46	.	1,52.77	35.83	68.31	15.83	16.33	74.97	*4,90.19
1946-47	.	1,33.63	39.29	80.74	16.67	5.19	1,96.81	*5,77.33
1947-48	.	1,44.69	39.23	67.16	65.65	16.28	1,94.51	*6,10.36

*These figures do not include Taxes on Income.

Expenditure

	10 Forests	22 Interest on debt and other obligations	23 Appropriation for reduction or avoid- ance of debt	25 Gen. Admn.	27 Admn. of Justice	29 Police	37 Edu- cation	50 Civil works	55 Super- annuation	64 A. Trans- fer to Revenue Reserve Develop- ment Fund	Other heads	Total
1945-46	.	39.71	20.76	29.25	69.72	20.39	40.20	51.73	44.33	2,14.25	1,09.22	6,88.01
1946-47	.	32.81	20.63	18.15	82.55	22.09	63.59	66.41	45.81	1,74.01	1,27.32	7,24.33
1947-48	.	32.14	20.55	13.01	1,00.09	21.69	93.86	80.89	45.61	..	1,47.67	6,30.56

STATEMENT III

STATEMENT OF ASSETS AND LIABILITIES AS ON 31ST MARCH 1949

(i) Statement showing the Capital Liabilities and Assets of the Madras Government

Details	31st March 1949 (Budget Estimate)
	Rs. Lakhs.
<i>Liabilities</i>	
A. BEARING INTEREST—	
(i) <i>Loans—</i>	
(a) Due to the Central Government	9,34.07
(b) Open Market Loans	15,52.73
(c) Special irredeemable loans	2.52
TOTAL (i)—LOANS	24,89.32
(ii) <i>Other Liabilities—</i>	
(a) State Provident Funds	5,42.96
(b) Depreciation Reserve Funds of commercial undertakings	6.85
TOTAL (ii)—OTHER LIABILITIES	5,49.81
TOTAL A.—INTEREST-BEARING LIABILITIES	30,39.13
B. FREE OF INTEREST—	
(i) Sinking Funds	3,77.36
(ii) Famine Relief Fund	44.34
(iii) Electricity Reserve Funds	1,95.21
(iv) Deposits, Advances and Remittances	40,40.30
TOTAL B.—LIABILITIES—FREE OF INTEREST	46,57.21
C. GRAND TOTAL—LIABILITIES	76,96.34
<i>Assets</i>	
A. ASSETS PRODUCING REVENUE—	
(i) <i>Productive—</i>	
(a) Productive Irrigation Works	16,07.68
(b) Electricity Schemes	19,10.49
(c) Cinchona Plantations	1,34.80
(d) Kerala Soap Institute	3.57
(e) Industrial Engineering Workshops	1.97
(f) Hydrogenation Factory	11.70
(g) Loans advanced (due to Government)	10,48.37
(h) Shares in Private Industrial Concerns	*98.25
(i) Capital outlay on Madras City Bus Service	73.27
TOTAL (i)—PRODUCTIVE	48,90.10

(i) Statement showing the Capital Liabilities and Assets of the Madras Government—Contd.

Details		31st March 1949 (Budget Estimate)
		Rs. Lakhs
Assets—Contd.	Brought Forward	48,90.10
(ii) Unproductive—		
(a) Unproductive irrigation works†	. . . . .	9,94.64
(b) Navigation Works	. . . . .	96.26
	TOTAL (ii)—UNPRODUCTIVE	10,95.90
	TOTAL D.—ASSETS PRODUCING REVENUE	59,86.00
E. OTHER ASSETS—		
	Capital outlay on civil works outside the revenue account	2,74.47
F. Securities in the Sinking Fund Investment Accounts	. . . . .	1,84.74
G. Securities in the Famine Relief Fund	. . . . .	44.30
H. Securities in the Electricity Reserve Funds	. . . . .	1,94.54
I. Securities in the Cash Balance Investment Account	. . . . .	3,78.90
J. Securities in the Revenue Reserve Fund‡	. . . . .	23,31.99
K. Closing Cash Balance	. . . . .	74.74
	L. GRAND TOTAL—ASSETS	94,69.68
	M. EXCESS OF ASSETS OVER LIABILITIES	17,73.34

*Includes Rs. 51 lakhs in the Budget for purchase of shares of the Industrial Finance Corporation proposed to be started.

†Includes Rs. 49.62 lakhs relating to outlay on special accelerated and widespread programme of improvements to minor Irrigation Works classified under 'Capital'.

‡Purchase price of securities.

(ii) Statement showing the Capital Liabilities and Assets of the Bombay Government

Details		31st March 1949
		(In thousands of Rs.)
A. BEARING INTEREST—		
(i) Loans—	Liabilities	
(a) Due to the Central Government		14,33,73
(b) Open Market Loans—		
(i) Loans for repayment of part of consolidated debt		10,48,23
(ii) Unclaimed Bombay Devt. Loan		98
	TOTAL LOANS	24,82,94
(ii) Other Liabilities—		
State Provident Funds		5,14,07
Depreciation Reserve Fund of commercial undertakings		18,67
	TOTAL (ii)—OTHER LIABILITIES	5,32,74
	TOTAL A.—INTEREST-BEARING LIABILITIES	30,15,68

(ii) Statement showing the Capital Liabilities and Assets of the
Bombay Government—Contd.

Details	31st March 1949
<i>Liabilities—Contd.</i>	(In thousands of Rs.)
B. FREE OF INTEREST—	
(i) Famine Relief Fund	67,68
(ii) Provincial Road Fund	1,44,18
(iii) Deposits, Advances and Remittances	24,16,81
TOTAL B.—LIABILITIES FREE OF INTEREST	26,28,67
C. GRAND TOTAL—LIABILITIES	56,44,35
<i>Assets</i>	
D. ASSETS (PRODUCING REVENUE)—	
(i) <i>Productive—</i>	
(a) Productive Irrigation Works	13,75
(b) Electricity Schemes	1,69,85
(c) Bombay Development Department	8,72,36
(d) Loans and advances (due to Government)	4,83,97
TOTAL (i)—PRODUCTIVE	15,39,93
(ii) <i>Unproductive—</i>	
(a) Unproductive Irrigation Works	11,39,66
TOTAL (ii)—UNPRODUCTIVE	11,39,66
TOTAL D.—ASSETS (PRODUCING REVENUE)	26,79,59
E. Loans due from the Bombay Municipal Corporation	7,73,69
F. INVESTMENT IN SECURITIES—	
(i) Sinking Fund Investment Account*	3,30,13†
(ii) Debt Redemption and Avoidance Fund*.	10,48,45
(iii) Investment in Treasury Bills out of Depreciation Funds of 3 per cent Loans*.	48,00
(iv) Nasik Distillery Depreciation Fund*	16,83
(v) Bombay Famine Relief Fund ‡	67,68
(vi) Securities in the Cash Balance Investment Account ‡	10,99,68
TOTAL ASSETS E. & F.	33,84,46

*Face value.

†These are face values on 31st October, 1948.

‡Purchase Price.

Details	31st March 1949
	(In thousands of Rs.)
K. CLOSING CASH BALANCE—	
Central Road Fund	6,12
Provincial Road Fund	1,44,18
Press Depreciation Reserve Fund	15
Nasik Distillery Depreciation Fund	1,23
Other Accounts (Grant for Specific purposes)	8,10
Balance with the Reserve Bank and Treasuries	41,00
Capital Expenditure met from balance	—29,72
Other debt heads (excluding Civil Deposits and Advances Repayable)	4,42
Civil Deposits	4,05,19
Advances Repayable	—58,10
Special Development Fund	2,18,52
Post War Reconstruction Fund	16,10,00
Free Balance	8,22,45
TOTAL—ASSETS K*	
	<u>31,73,54</u>
L. GRAND TOTAL OF ASSETS	
	<u>92,37,59</u>
M. EXCESS OF ASSETS OVER LIABILITIES	
	<u>35,93,24</u>

(iii) C. P. & Berar—

No Statement of Assets and Liabilities was received from the Government of C. P. & Berar.

*A major portion of this is invested in three-monthly treasury bills of the Government of India.

PART FOUR
LEGISLATIVE COUNCILS



DECISION REGARDING LEGISLATIVE COUNCILS

November 1948

[The Provincial Constitution Committee in its report dated June 27, 1947, recommended that members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province. [Vol. II, Document No. 24(i)]. This recommendation was accepted by the Assembly (C.A. Deb., Vol. IV, p. 688). In pursuance of this decision, meetings of the members of the Assembly from each Province (except Bombay) were convened in November 1948 to decide on the question. The members representing the Province of Bombay had already met on July 20, 1947 and decided in favour of a Legislative Council. The representatives of Madras, West Bengal, the United Provinces, East Punjab and Bihar decided in favour of a Legislative Council, while those from Orissa, Assam and the Central Provinces and Berar decided against it.

The record of the proceedings is reproduced below.]

RECORD OF PROCEEDINGS

MADRAS

November 22, 1948

Present : (1) Dr. B. Pattabhi Sitaramayya; (2) Shrimati G. Durgabai; (3) Shri V. Nadimuthu Pillai; (4) Shri C. Perumalswami Reddi; (5) Dr. V. Subramaniam; (6) Shri T. A. Ramalingam Chettiar; (7) Shri N. Sanjeeva Reddi; (8) Shri U. Srinivasa Mallayya; (9) Mahboob Ali Baig Sahib Bahadur; (10) Mr. B. Pocker Sahib; (11) Mr. M. Mohamed Ismail; (12) Shri Kallur Subba Rao; (13) Shri V. C. Kesava Rao; (14) Shri P. Kakkan; (15) Shri C. Subramaniam; (16) Shri P. Kunhiraman; (17) Shri D. Govinda Doss; (18) Shri S. Nagappa; (19) Shri T. T. Krishnamachari; (20) The Hon'ble Shri K. Santhanam; (21) Shri T. Prakasam; (22) Shri L. Krishnaswami Bharathi; (23) Shri V. I. Muniswamy Pillai; (24) Dr. P. Subbarayan; (25) Shri M. Ananthasayanam Ayyangar; (26) Shri A. K. Menon; (27) Mrs. Dakshayani Velayudhan.

Dr. B. Pattabhi Sitaramayya was elected to the Chair.

Shri M. Ananthasayanam Ayyangar moved—

That the Legislature of the Madras Province, as the Province is today, be bicameral and that a second chamber be provided for in the new Constitution.

Shri L. Krishnaswami Bharathi seconded Shri Ananthasayanam Ayyangar's proposal.

The Hon'ble Shri K. Santhanam opposed the proposition and moved that there should be only a single chamber for Madras. Shri T. T. Krishnamachari seconded Shri Santhanam's proposal.

After some discussion, the proposition of Shri M. Ananthasayanam Ayyangar was put to the vote and carried by a majority.

ORISSA

November 22, 1948

Present : (1) Shri Biswanath Das; (2) Shri B. Das; (3) Shri Santanu Kumar Das; (4) Shri Nandkishore Das; (5) Shri Lokenath Misra.

Shri Biswanath Das was elected to the Chair.

After a short discussion the meeting decided to adjourn to Monday the 29th instant at 1 p.m. or immediately after the session of the Constituent Assembly on that day so that all the members from Orissa, particularly the Prime Minister Shri Hare Krushna Mahatab and Mr. Raj Krushna Bose, another Minister, could take part in the discussion. The adjourned meeting would be held in the Constituent Assembly Hall itself. Shri Biswanath Das desired that telegrams should be sent to the absentee members, Shri Hare Krushna Mahatab, Shri Raj Krushna Bose and the Raja of Parlakimedi who were not in Delhi.

November 29, 1948

Present : (1) Shri Lokenath Misra; (2) Shri Lakshminarayan Sahu; (3) Shri Santanu Kumar Das; (4) Shri B. Das; (5) Shri Biswanath Das; (6) The Hon'ble Shri Raj Krushna Bose; (7) Shri Nandkishore Das.

Shri Biswanath Das was in the Chair.

Shri Biswanath Das read out a letter which he had received from Shri Hare Krushna Mahatab, Premier of Orissa, and after a short discussion the meeting decided, by a majority (Shri Lakshminarayan Sahu alone dissenting), that there should be no second chamber for Orissa under the new Constitution.

The following two members representing the Orissa States in the Constituent Assembly, who were informally present at the meeting, were also in agreement with the majority opinion : (1) Shri Sarangdhar Das; (2) Shri Lal Mohan Pati.

CENTRAL PROVINCES AND BERAR

November 23, 1948

Present : (1) The Hon'ble Pandit Ravi Shankar Shukla; (2) Seth Govind

Das; (3) The Hon'ble Rajkumari Amrit Kaur; (4) Shri Brijlal Nandlal Biyani; (5) Shri H. V. Kamath; (6) Shri B. A. Mandloi; (7) Dr. Raghuvira; (8) Shri L. S. Bhatkar; (9) Shri S. T. Dharmadhikari.

The Hon'ble Pandit Ravi Shankar Shukla was elected to the Chair.

It was unanimously resolved that no second chamber need be set up for the State of Central Provinces and Berar under the new Constitution.

The following three members who represented the Central Provinces States in the Constituent Assembly and who were informally present at the meeting were also in favour of this view: (1) Shri R. L. Malaviya; (2) Shri Kishori Mohan Tripathi; (3) Shri Ramprasad Potai.

ASSAM

November 23, 1948

Present: (1) Saiyid Muhammad Saadulla; (2) Saiyid Abdul Rauf; (3) Prof. Nibaran Chandra Laskar; (4) Shri D. Basu Matari.

It was unanimously decided that no Upper House need be set up for the State of Assam under the new Constitution.

WEST BENGAL

November 24, 1948

Present: (1) The Hon'ble Dr. Syama Prasad Mookerjee; (2) The Hon'ble Shri K. C. Neogy; (3) Pandit Lakshmi Kanta Maitra; (4) Mr. Naziruddin Ahmed; (5) Shri Upendranath Barman; (6) Shri Monomohon Das; (7) Shri Mihir Lal Chattopadhyay; (8) Shri Basanta Kumar Das; (9) Shri Satis Chandra Samanta; (10) Shri Surendra Mohan Ghose; (11) Shri Suresh Chandra Majumdar; (12) Shri Arun Chandra Guha; (13) Shrimati Renuka Ray.

The Hon'ble Dr. S. P. Mookerjee was elected to the Chair.

After a short discussion, when the Chairman took the sense of the meeting, it was found that opinion was equally divided on the question of having an Upper House for the State under the new Constitution. It was, therefore, decided that the meeting should be adjourned to the next day at 1 p.m. or immediately after the session of the Constituent Assembly. The place of the meeting would be the Constituent Assembly Hall itself.

Notices of the adjourned meeting to be sent to the members immediately.

November 25, 1948

Present: (1) The Hon'ble Dr. Syama Prasad Mookerjee; (2) The Hon'ble Dr. H. C. Mookherjee; (3) The Hon'ble Shri K. C. Neogy; (4) Pandit Lakshmi Kanta Maitra; (5) Mr. Naziruddin Ahmed; (6) Shri Surendra Mohan Ghose; (7) Shri Arun Chandra Guha; (8) Shrimati Renuka Ray; (9) Shri Monomohon Das; (10) Shri Upendranath Barman; (11) Shri

B. K. Das; (12) Shri Suresh Chandra Majumdar; (13) Shri Ari Bahadur Gurung; (14) Shri Satis Chandra Samanta; (15) Shri Mihir Lal Chattopadhyay.

The Hon'ble Dr. Syama Prasad Mookerjee was in the Chair.

The meeting decided by a majority (with three dissentients) in favour of an Upper House being set up for West Bengal under the new Constitution.

The meeting was further of the opinion that the system of nomination by Governor to the Upper House existing under the provisions of the Draft Constitution should be deleted and that the seats set apart for nomination should be added to the quota to be filled by election through various panels.

UNITED PROVINCES

November 25, 1948

Present : (1) Shri Jaspat Roy Kapoor; (2) Prof. Shibbanlal Saxena; (3) Pandit Balkrishna Sharma; (4) Maulana Hasrat Mohani; (5) Begum Aizaz Rasul; (6) Shri R. V. Dhulekar; (7) Shri Mahavir Tyagi; (8) Mr. Aziz Ahmed Khan; (9) Shri Venkatesh Narain Tewari; (10) Shri R. C. Gupta; (11) Shri Algu Rai Shastri; (12) Pandit H. N. Kunzru; (13) Shri A. Dharam Dass; (14) Raja Jagannath Baksh Singh; (15) Shri Gopal Narain; (16) Shri Vishwambhar Dayal Tripathi; (17) Shri Satish Chandra; (18) The Hon'ble Pandit Govind Ballabh Pant; (19) Dr. B. V. Keskar; (20) The Hon'ble Shri Purushottam Das Tandon; (21) Shri Sunder Lal; (22) Dr. Dharam Prakash; (23) Acharya J. B. Kripalani; (24) Shri Dayal Dass Bhagat; (25) Shri Bhagwan Din; (26) Shri Mohanlal Gautam; (27) Shrimati Sucheta Kripalani; (28) Shri Ajit Prasad Jain.

The Hon'ble Shri Purushottam Das Tandon was elected to the Chair.

It was decided by a majority that the State of the United Provinces should have an Upper House under the new Constitution.

EAST PUNJAB

November 25, 1948

Present : (1) Dr. Bakshi Tek Chand; (2) Shri Achint Ram; (3) Pandit Thakurdas Bhargava; (4) Shri Bikram Lal Sondhi; (5) The Hon'ble Shri Jairamdas Daulatram; (6) The Hon'ble Sardar Baldev Singh; (7) Chaudhari Ranbir Singh; (8) Prof. Yashwant Rai; (9) Sardar Hukam Singh; (10) Master Nand Lal; (11) Giani Gurmukh Singh Musafir.

The Hon'ble Sardar Baldev Singh was elected to the Chair.

The meeting resolved by a majority (Master Nand Lal alone being in the opposition) that an Upper House should be set up for the East Punjab Legislature for a period of ten years in the first instance. The continuance or otherwise of the Upper House is to be decided at a joint session of both

Houses of the future East Punjab Legislature by a majority of the members present.

BIHAR

November 26, 1948

Present : (1) The Hon'ble Shri Shri Krishna Sinha; (2) The Hon'ble Shri Anugraha Narayan Sinha ; (3) Shri Boniface Lakra ; (4) Shri Mahesh Prasad Sinha; (5) Shri Jagat Narain Lal; (6) Maharajadhiraja Sir Kameshwara Singh; (7) R. B. Syamanandan Sahaya; (8) Shri Jaipal Singh; (9) Shri Satyanarayan Sinha ; (10) Shri Brajeshwar Prasad ; (11) Shri Sarangdhar Sinha ; (12) Shri Chandrika Ram; (13) Shri Amiyo Kumar Ghosh; (14) Shri Devendra Nath Samanta; (15) Shri Bhagwat Prasad; (16) Shri Kamleshwari Prasad Yadav; (17) Shri Ram Narain Singh; (18) Shri B. P. Jhunjhunwala; (19) Shri Rameshwar Prasad Sinha; (20) Prof. K. T. Shah; (21) Syed Jafar Imam; (22) Mr. Mohd. Tahir; (23) The Hon'ble Shri Jagjivan Ram; (24) Shri Guptanath Singh.

The Hon'ble Shri Shri Krishna Sinha was elected to the Chair.

It was decided by a majority (16 against 7) that the State of Bihar should have an Upper House under the new Constitution.

PART FIVE
COUNCIL OF STATES



5

COMPOSITION OF THE COUNCIL OF STATES December 1, 1948

[At its meeting held on August 24, 1947, the Union Constitution Committee decided that twenty-five members of the Council of States should be returned from functional panels. The remaining members were to be representatives of the units on the scale of one representative for every whole million of the population of the unit up to five million plus one representative for every additional two million subject to a total maximum of twenty-five members for one unit. (Vol. II, Document No. 16).]

The Drafting Committee recommended that functional panels should be abolished and that the composition of the Council of States should be revised as follows :

- (a) 15 members to be nominated by the President ;*
- (b) the balance to be elected from States.*

The Union Constitution Committee met again on December 1, 1948, to consider the allocation of seats in the Council of States. The record of the proceedings of this meeting is reproduced below.]

RECORD OF PROCEEDINGS OF THE UNION CONSTITUTION COMMITTEE December 1, 1948

Present : The Hon'ble Pandit Jawaharlal Nehru (*Chairman*); The Hon'ble Shri Jagjivan Ram ; The Hon'ble Dr. B. R. Ambedkar; Shri K. M. Munshi ; Prof. K. T. Shah ; Sir V. T. Krishnamachari; Shri B. H. Zaidi.

Sir B. N. Rau, Shri S. N. Mukerjee, Joint Secretary, and Shri K. V. Padmanabhan and Shri P. S. Subramaniam, Under Secretaries, also attended the meeting.

The committee did not go into the details of allocation of seats in the Council of States as owing to mergers of various types the position of the Indian States was still unsettled. They were of the view that it was advisable to postpone consideration of the detailed allocation of seats to a later date. The committee, while reiterating their previous decision that the representation of units in the Council of States should be on the scale of one representative for every million of the population up to five million

of the population *plus* one representative for every additional two million of the population thereafter, considered it unnecessary to adhere to the other decision that the maximum number of representatives from any one unit should be limited to twenty-five. It was found that only two States, namely Madras and the United Provinces, would be affected by the imposition of such a limitation and that an abrogation of this limit, while securing uniformity, would involve only an increase by seven seats in the total number of seats which would be well within the overall maximum of 250 members provided for in article 67(1) of the Draft Constitution.

As regards the members to be nominated to the Council of States by the President, it was decided to retain the number fifteen as in the Draft Constitution [article 67 (1) (a)] and to leave it to the Constituent Assembly to make any reduction if it so chooses.

The committee also agreed with Dr. Ambedkar's suggestion that the President may be empowered to nominate experts, not exceeding three in number, to Parliament in connection with any particular legislative measure which may be introduced in either House of Parliament. These experts would have the right to speak in, and otherwise take part in the proceedings of, either House of Parliament or any of its committees but shall not be entitled to vote. The committee was in favour of a similar power being given to the Governors of States provided that in their case the number of such experts should not exceed one in respect of any particular legislative measure.

PART SIX
CITIZENSHIP

CITIZENSHIP RIGHTS OF INDIANS ABROAD

[The citizenship provisions came up for discussion in the Constituent Assembly on November 18, 1948 but consideration was deferred as a large number of amendments had been tabled, and it was considered desirable to give an opportunity to the proposers of these amendments to exchange views with the members of the Drafting Committee and arrive if possible at a consensus.]

The Secretariat of the Constituent Assembly received a memorandum from the Ceylon Indian Congress on behalf of Indian nationals in Ceylon. Radhakrishnan Ramani, a well-known Advocate of Kuala Lumpur, Malaya, also submitted a memorandum on the problem of the large number of Indians who resided and carried on diverse occupations in Malaya.

There was also some correspondence with S. Dutt, then Additional Secretary, Ministry of External Affairs, on questions affecting various categories of Indian nationals in Pakistan, Malaya, Ceylon and other countries. Dutt summarized the views of that Ministry in a note recorded in 1949.

In this Part are reproduced: (i) memorandum submitted by the Ceylon Indian Congress, November, 1948: (ii) two memoranda forwarded by R. Ramani, April, 1949: and (iii) notes recorded by S. Dutt, June 1949.]

(I) MEMORANDUM BY CEYLON INDIAN CONGRESS
November 11, 1948

THE PRESENCE OF INDIANS in Ceylon is a result of the migration which commenced about 1837. Even the British Government of India felt that such migration could be permitted only on condition that (1) the emigrant countries should also admit classes of Indians other than unskilled workers so that the emigrants might not be treated as a depressed slave class and might have leaders who could guide them; (2) the emigrants would have in the immigrant countries status or rights equal to the rest of the population as well as the right and facilities to settle permanently in the emigrant country.

At present there are about 900,000 Indians of whom nearly 700,000 are workers, living in barrack-like rooms on the tea and rubber plantations

which produce over 40% of the national income of Ceylon. About 50,000 are traders of various kinds and the rest are employed as unskilled and semi-skilled workers, clerks, salesmen and the like. There have been during the last decade various attempts to reach an agreement on the status and rights of Indians in Ceylon. After the attainment of independence by India negotiations have been going on between the Prime Ministers of India and Ceylon. What the Ceylon Indians and the Government of India wanted was full rights of Ceylon citizenship to all Indians now in Ceylon on their completing residence of five years and on submitting a declaration of their intention to settle permanently in Ceylon. This demand is justified by the past assurances and undertakings given by Ceylon, and the vast and essential contributions which the Indians have made and are making to the well-being and prosperity of Ceylon.

QUALIFICATIONS

The qualifications proposed by the Prime Minister of Ceylon to the Indians now in Ceylon are embodied in the proposed Indian Residents Citizenship Bill to be introduced in the Ceylon Parliament towards the end of November 1948. They are: (1) *Residence*: Residence of seven years for married persons and ten years for unmarried persons immediately prior to December 31, 1945 and continued residence up to the date of application. (2) *Family Residence*: In the case of a married person his wife and each minor son and unmarried daughter should have been ordinarily resident in Ceylon and should continue so to reside till the date of application. (3) *Means Test*: Assured income of a reasonable amount or adequate means of livelihood for himself and his dependents. (4) *Ability to comply with the laws of Ceylon*. (5) *Renunciation of Indian Citizenship according to Indian Law*.

PROCEDURE

I. *Application*: (a) Affidavit regarding qualifications, (b) answers to questions to be prescribed, (c) list of witnesses to qualifications preferably with affidavits from them.

II. *Investigation by Investigating Officers*: (a) Investigating Officers visiting every place where the applicant had resided, for inquiry, (b) Report to Commissioners by Investigating Officers. (c) If report is adverse the applicant should be called upon to show cause against the rejection of application. (d) After establishing such *prima facie* case notice shall be published calling for objections. (e) If *prima facie* case not established application shall be rejected. (f) If no objection is raised application shall be allowed. (g) If objection is lodged enquiry would be held by Commissioner with right to be represented by lawyers. (h) Appeal to the Supreme Court

will be available. All applications shall have to be made within a period of two years. No extension on any account will be granted.

OUR COMMENTS UPON ABOVE QUALIFICATIONS

(1) *Residence*: This will require up to date of application 10 to 12 years' residence for married persons and 13 to 15 years' residence for unmarried persons. This will be very difficult for labourers who have changed employments and residences during the period. The distinction between married and unmarried will be impracticable to work as there has been no registration of marriages among plantation workers—no facilities having been provided. On estates which have changed hands (this has happened on an abnormal scale during the war period) documents would have been destroyed and no proof would be available; for Indian workers outside estates strict proof would be impossible.

(2) *Family residence*: The term "ordinarily resident" is vague and difficulties for proving even lawful reasons for absence of dependents will be great. This might result in breaking up of families into citizens and non-citizens.

(3) *Means test*: This is grossly unjust towards persons who have spent their lives working in Ceylon and are incapacitated by sickness or old age. This will also prevent minor children of such disqualified persons from obtaining citizenship.

(4) *Ability to comply with the laws of Ceylon*: This is intended to exclude from citizenship persons married to more than one wife according to Hindu Law and persons who have married sisters' daughters which is valid under Indian Law. To apply this to marriages that had already taken place in the past is unjustifiable.

(5) *Renunciation of Indian citizenship*: The ignorant labourer cannot be expected to know what the Indian Law is nor to have the ability to take the necessary action under it.

OUR COMMENTS ON PROCEDURE

When dealing with hundreds of thousands of ignorant unskilled workers living under barrack conditions the complicated procedure can only result in disqualifying very large numbers of even those who possess all the qualifications required.

Second grade citizenship: In spite of having and establishing the qualifications required by the Ceylon Prime Minister, Indians will be only admitted to a second-rate citizenship. The law permits any discrimination between this class of registered citizens and citizens by descent. This inferior status will particularly deprive the Indian estate workers of all shares in colonization and rural development and expansion

schemes which are meant to settle the landless citizens on land. Of all inhabitants of Ceylon the Indian estate worker is the one who has the greatest need of such settlement. His barrack life of over a century, living day and night under the supervision and mercy of his employer and dependent for his fundamental needs including supply of foodstuffs, medicines and ordinary educational facilities, should be ended. It will be a crime to agree to any settlement which will prevent the estate workers from developing community life outside the estate.

Large residue of statusless Indians: All the above qualifications every one of which has to be established before being registered as a citizen and the complicated procedure will certainly result in a large body of 150,000 to 200,000 of those permanently settled being denied citizenship in Ceylon. A situation which will create a large body of underprivileged Indians in Ceylon should be prevented at any cost if India's honour and self-respect are to be maintained and the future embarrassments in the relations between the two countries are to be avoided.

(II) MEMORANDUM BY R. RAMANI

April 18, 1949

This memorandum is concerned with the examination of article 5 of the Draft Constitution from the point of view primarily of the large body of Indians who reside and carry on their diverse occupations in Malaya. Their number has been recently estimated at over 800,000 and that fact emphasizes the importance of the problem.

The fundamental postulate of this memorandum is that almost without exception this entire body of Indians desire to remain Indian nationals. Some there are who may think otherwise, but their number is negligible.

To say this is not to demonstrate their indifference to the loyalties they owe to the country of their sojourn or even domicile. They like to remain good Malaysians without sacrifice of or prejudice to their Indian nationality—if this is possible.

This memorandum shows hereafter that this is not only possible but is permitted by the municipal law of Malaya. The main gravamen of the complaint against the draft clause is that in spite of such possibility, the draft deprives Indians in Malaya of the right to remain Indian nationals under the new Constitution. In other words, what Malaya has conceded to foreign nationals within the State, the Indian Constitution proposes to deny to its own nationals.

POSITION OF INDIAN NATIONALS IN MALAYA

In Malaya, there are three Asian races that compose the population; the Malays, the Chinese and the Indians. The Malays by reason of their

birth within the allegiance of the Sultans (and their religion) are Malay nationals. The Chinese are nationals of China. The Indians are for the very large part British subjects, or British protected persons, having migrated from the Indian States.

In February, 1948, a new Constitution was introduced into Malaya combining the nine Malay States under British protection and the two British Colonies of Penang and Malacca, into a federal structure. The prior consultations and negotiations that led to the creation of the Federation showed the necessity of uniting on a common platform the three separate and dissimilar nationalities into one uniform pattern, thereby helping to avoid in the present and for the future political and economic rivalries between the three communities, each of whom was essential to the orderly development and progress of the country as a whole.

This was achieved by providing a common denominator to all the different nationals in a primary and explicit loyalty to Malaya in terms of a Federal citizenship. The Federation Agreement between the British Government and the Sultans provides for the creation and acquisition of such Federal citizenship. The precise terms of the particular clauses are not at all relevant to the present purpose. But the fundamental fact to be noticed is that the acquisition of Federal citizenship does not detract or subtract from the particular nationality of any individual. It is implicit in the Agreement and has been officially confirmed that no one otherwise qualified and becoming a Federal citizen in any manner imperils his particular nationality. The only condition is that he should make a declaration of permanent residence in Malaya, and agree to regard the Federation as his home and the object of his loyalty. It is a nice question of law, if indeed even such a declaration involves the unambiguous acquisition of a domicile of choice: but it is assumed for the purposes of this memorandum that it does involve such acquisition.

According to the clauses of the Federation Agreement hereinbefore referred to, on the coming into force of the provisions relating to Federal citizenship—they have not up to the present day—a proportion of the Indians resident in Malaya will automatically *become* in law Federal citizens and the rest will have to apply for acquisition of citizenship.

It is extremely important to bear in mind that by accepting this citizenship, the Indian in Malaya is explicitly regarded as an Indian national and not as one who has exchanged his nationality for another by naturalization or otherwise. The only foreign nationality available to him is the Malay nationality: and though it may be theoretically possible for him to become a naturalized subject of the Sultan, this is not being offered to him, and he does not by the mere fact of his becoming a Federal citizen, become a subject of the Sultan. The use of the term 'citizen' has perhaps tended to confuse it with the wider concept of the same term, meaning the nationality of an individual and the quality of his being the subject of a certain State.

And further, though this is a political rather than strictly a legal consideration, it is no less important to bear in mind that anyone not becoming a Federal citizen will have no political rights, which is as it should be: but the recent growth of Malay nationalism, and the manifestations of it that are evident, are pregnant with the possibility of denying him as well most of his civil rights which he has unquestioningly enjoyed for generations.

And it may be added that in the context of the history of assisted emigration from India and the ostensible reasons leading to the more recent stoppage of emigration, it would be odd indeed if Indians in Malaya as a body can be advised to decline to accept political rights when they are offered to them.

If in this context of conditions in Malaya, one turns to the definition in article 5 of the Draft Constitution, the proviso to the clause 'provided he has not acquired the citizenship of any foreign State before the date of commencement of this Constitution'—automatically deprives him of the right to remain an Indian national. This on the assumption that the Malayan provisions will, as is most likely, take effect before the new Constitution comes into force. If on the other hand it is assumed that the effective date of the new Constitution precedes that of the Malayan provisions, the proviso will not apply and the Indian in Malaya will be entitled to regard himself an Indian citizen. If thereafter in the legitimate consciousness of his not compromising his nationality he becomes a Federal citizen, article 5 will not touch him, any compliance with the Malayan law of a declaration of permanent residence in Malaya notwithstanding, because of the opening words of the article making the crucial date 'the date of commencement of this Constitution'. May be future legislation under article 6 will deal with this situation: but the legal, no less moral, obligation of a Government of India, not lightly to disregard and deprive over 800,000 Indians of their validly acquired and valuable status will be immense.

In either of those two alternative considerations, by being or becoming a Federal citizen an Indian in terms of Malayan municipal law remains an Indian national: whereas for that self-same reason the Draft Constitution does, or any future Indian legislation may, deprive him of that nationality. So that in fact and in law he becomes stateless, (unless he is to be deemed to continue to remain a British subject) and thereby loses even the right of protection in Malaya as an alien, which by a universally recognized customary rule of the Law of Nations every State has over its citizens abroad.* This circumstance shows the anomaly to which the clause leads by resting a definition of nationality on permanent abode or domicile.

*Oppenheim—5th edn. Vol. I para. 319.

EXAMINATION OF THE DRAFT ARTICLES ON CITIZENSHIP

The first thing that strikes any student of international law is that the article defining and creating an Indian citizenship bases the conception on residence and domicile. Fundamentally neither permanent residence in a foreign country nor the acquisition of a foreign domicile has anything whatever to do with one's nationality. It is well-known law that an Englishman, for instance, who leaves England and settles permanently in the United States, with the settled intention of not returning to England, does not cease to be a British national. Referring more particularly to emigrant populations well-known writers on international law have pointed out that as emigration involves the voluntary removal of an individual from his home State with the intention of staying abroad, but not necessarily with the intention of renouncing his nationality it is obvious that emigrants may well retain their nationality.*

In this aspect of the matter the reference in the latter part of article 5(a) as to making a permanent abode in any foreign State and in the latter part of article 5(b) regarding domicile are obviously inappropriate in a definition of nationality.

From the same point of view, the proviso to the article in so far as it is an attempt to avoid dual nationality, should be clarified by the addition of appropriate words qualifying the citizenship referred to therein, as such citizenship involves a change or transfer in one's allegiance; because fundamentally nationality is based on allegiance; and not any citizenship such as the incomplete and designedly truncated form as is prescribed in Malaya, which therefore is not co-extensive with nationality.

It is apprehended that the article in its main parts had to have that form and content to meet the special circumstances created by the partition of India. Even in that context it should be possible to define a citizen in terms of birth and allegiance, and keep away from the complicating considerations of domicile.

Moreover modern trends in Constitution-making suggest that the denial or deprivation of nationality by reason of the acquisition of any foreign nationality is a matter to be regulated by subsequent legislation, and not by the Constitution Act.

The article as drawn possibly offends against other principles of international law. Says a recent writer:

...In all these respects nationality differs from domicile. Any legal system may validly determine the conditions upon which domicile depends. It may hold the domicile to have been established in a foreign country, though the law of that country regards the domicile as established elsewhere. The law of a given country can answer the question 'where

*Oppenheim—5th edn. Vol. I para 296.

is the domicile of X?' It cannot answer the question 'of which State is he a citizen?' but merely 'is he a citizen of my State?' Therefore English law may prevent a person from being without domicile or from having more than one domicile in the sense of English law. It cannot prevent him from having two or more nationalities or from having none. Nevertheless some laws and even some constitutions lay down that 'nobody shall simultaneously be a citizen of the State and of any other State'. See Poland Const. of March 17, 1921, art. 8: Lithuania Const. of 15 May 1928, art. 10: Latvian Law of 2 June 1927, No. VIII, and others. *This is ineffective.* A State can prevent dual nationality only by prescribing *loss of nationality* for any *subject* acquiring or possessing nationality of a foreign State*.

Bearing all these considerations in mind, the following simpler definition in substitution of article 5 is suggested for consideration:

Every person of the Indian race who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) or in Burma or in Ceylon or in Malaya; and who has not after the first day of April, 1947 made his permanent abode in any foreign State outside the territory of India as defined in this Constitution, with the intention of transferring his allegiance to that State, shall be a citizen of India.

It is submitted that the article provides for the difficulties created by the partition, and avoids the pitfalls of permanent abode and domicile. It avoids further the references to domicile in terms of the provisions of the Indian Succession Act. These latter are wholly inappropriate because their requirement of merely a year's residence and a declaration as helping to acquire a domicile for the very restricted purposes of the Act ought not to be extended to qualify for the larger and more valuable right of acquiring the citizenship of a State. The fact that even this exceptional and very restricted right is not by the very terms of that Act applicable to Hindus, Muhammadans, Buddhists, Sikhs and Jains underlines its inappropriateness in a constitution that is almost wholly designed for those very communities.

If however the present structure of the article should be retained in its present form, then it is urged that the proviso be amended so as to exclude from its operation the acquisition of citizenship that does not involve any change in nationality. Because in a consideration restricted to Malayan conditions, it is obvious 'the citizenship of a foreign State', the prior acquisition of which prevents the conferment of citizenship under the Indian Constitution, must be and can only be something that affects that person's nationality and therefore allegiance; this most certainly the Malayan Federal citizenship is not.

It is suggested that this limited objective may be achieved by the addition of the words—*thereby becoming the national of that State*—after the words 'foreign State' in the proviso, and in article 5(a). This will leave article 5(b) untouched which provides for cases in which if birth is outside the territory of India as defined in the Constitution, there must be at least domicile to qualify.

In so far as a well founded fear of dual nationality provides the background for much of the complexity of the clause, it is to be pointed out that dual and even multiple nationality is a very common phenomenon in international law. It is the incidental result of the right of every sovereign state to define its own nationals and the conflict of laws that arises therefrom. But as Wolff points out it is the province of subsequent legislation to prescribe for the *loss* of nationality for any *subject* acquiring or possessing nationality of another state. An attempt to anticipate it in the Constitution, even if effective leads to unexpected results.

The suggestions made in this memorandum for amendments to the draft article are however only a means to an end. They are merely intended to indicate that it is not impossible to reshape the article to meet the point of view that has been presented, if the point of view has, as it should be clear it has, full validity. The end to be achieved is the retention by over 800,000 Indians in Malaya of their right to be the nationals of an independent India in common with their compeers at home. If the memorandum has succeeded in presenting with reasonable clarity that their right has not been bartered away in a confusion of words, it has achieved its purpose.

ADDENDUM TO THE MEMORANDUM BY R. RAMANI

April 25, 1949

In view of the reference in sub-clause (b) of article 5 of the Draft Constitution of India to births in Burma and Ceylon, as well as Malaya, as qualifying for Indian citizenship in certain circumstances, it had been hoped to include in the memorandum a consideration of the position as it would affect Indians in Burma and Ceylon, by way of comparison or contrast to the point of view presented in the memorandum on behalf of Indians in Malaya. This was not possible at the time as the necessary legislative enactments and other literature were not available. Through the courtesy of the Commonwealth Department of the Government of India, they have now been made available, and these further observations are now submitted.

Ceylon: The position of Indians electing to become citizens of Ceylon is now placed beyond the possibility of doubt. The published correspondence exchanged between the Governments of India and Ceylon makes it abundantly clear that throughout the discussions at all levels, it was insisted on by

Ceylon and freely conceded by India, that an Indian admitted to the citizenship of Ceylon would have to cease to be an Indian national. This the proviso to the draft article obviously covers.

In this respect the position in Ceylon is the complete antithesis to the position in Malaya. Even at the risk of repetition it must be stated again that the acquisition of Federal citizenship in Malaya is regarded by the Malayan Government as something not inconsistent with one's nationality, which is preserved inviolate.

Burma: As suggested in the memorandum on the authority of Wolff, the Constitution Act simply defines four classes of persons as qualifying for citizenship of the Union: and does not prescribe by a proviso or otherwise for any disqualification arising out of citizenship of a foreign State. Subsequent legislation under clause 12 of the Constitution has dealt with this matter.

The clause in the Constitution that affords the nearest parallel to Malayan conditions is sub-clause (IV) of clause 11. Under this sub-clause every person born outside the Union territories (but within the British Dominions) and who qualifies by a prescribed period of residence in any of the Union territories and intends to reside permanently therein may signify this *election* of citizenship of the Union. The Union of Burma Citizenship (Election) Act, 1948, prescribes the machinery for the acquisition of citizenship by election. Section 4 provides for the form of application to the appropriate officer. Sections 5, 6, and 7 deal with the procedure at the hearing and the forwarding of the decision to the Minister, who, when such decision is favourable issues the certificate of citizenship. This follows the important section 8. Under this section the officer to whom the certificate is sent is required to call upon the applicant to subscribe to a declaration on oath *renouncing any other nationality or status as citizen of any foreign country*, before delivering the certificate to him. So that the conferment of Burma citizenship under this clause requires a deliberate renunciation of one's existing nationality, whereas in Malaya the acquisition of Federal citizenship not only does not require such renunciation but is declared to be a civil status without prejudice to one's nationality.

Further as regards all citizens of the Union, generally section 14 of the Union of Burma Citizenship (Election) Act, 1948 provides for an automatic loss of citizenship for every citizen who by a voluntary or formal act obtains naturalization in a foreign State.

The Draft Constitution of India is therefore unique in providing for a loss of nationality by reason of the prior acquisition of a status which in terms is not equivalent to naturalization.

The Burma Constitution and subsequent legislation, therefore, bear out the validity of the criticism of the Draft Constitution of India as prepared in the memorandum.

(III) NOTE BY S. DUTT, ADDITIONAL SECRETARY, MINISTRY OF
EXTERNAL AFFAIRS
June 16, 1949

This note examines the citizenship provisions in the Draft Constitution of India (articles 5 and 6) to see whether they are adequate to meet the requirements of all persons originating in territories included in India before August 15, 1947 and now living abroad, who are anxious to acquire Indian citizenship at the commencement of the Constitution or who would otherwise be without any citizenship. It also examines article 5 with a view to seeing whether this article makes it sufficiently easy for persons originating in Pakistan, who have permanently migrated to India, to acquire Indian citizenship on the date of commencement of the Constitution.

2. Under article 5, as it stands, every person living abroad who himself or either of whose parents or any of whose grandparents was born in the territory of India and who has not made his permanent abode in a foreign State, will be a citizen of India provided he has not acquired the citizenship of any foreign State before the date of commencement of the Constitution. Countries within the Commonwealth are, possibly, not foreign States. In any case, most persons of Indian origin now living in overseas countries, who have not made their permanent abodes abroad, will automatically be Indian citizens. The reason is that at least one of their grandparents must have been born in India. Only in the case of Fiji and British Guiana where Indians migrated more than 100 years ago it is possible that there is a small number of persons of Indian origin whose grandparents were born in those territories but whose great-grandparents were born in India. After discussion with Sir B. N. Rau it was decided by us not to press for a provision in the Constitution for the Indian citizenship of such persons whose connection with India is so remote. Sir B. N. Rau had pointed out that in most countries citizenship law goes back only to grandparents.

I do not advise that we should ask for the amendment of article 5 so as to bring in great-grandparents.

3. Next, we have to consider the cases of persons originating in the territory now included in Pakistan but living abroad, who have no intention of returning to Pakistan and who want to make their permanent homes in India. Such for example, are persons originating in West Punjab now living in Burma, Egypt and Indonesia, whose homes in the West Punjab have been destroyed and all of whose relations have moved to India. Under draft article 5, as it stands, any such person must return to India, submit a declaration of his intention to acquire Indian domicile, and reside here for at least a month before the date of the declaration. Such a requirement places these persons in a very difficult situation. Take Burma, for example. Regulations for re-entry into Burma are so strict that once a person leaves

that country, he cannot enter it again. It would not be fair to compel many thousands of persons, who have no homes left in Pakistan, to return immediately to India, leaving their business behind, merely to qualify for Indian citizenship. To meet their difficulties our Ambassador in Burma has suggested that a person, who makes a declaration before the Ambassador of his intention to make India his home and takes an oath of allegiance to India, should be regarded as having fulfilled the requirement of Indian citizenship on the date of commencement of the Constitution. This suggestion was not acceptable to the Constitutional Adviser. In his view, the intention of article 5 of the new Constitution is that no person should, at the inception of the new Constitution, be a citizen of India unless he is connected with the territory of India by birth, descent or domicile.

4. The matter was taken up by the Prime Minister himself with Sir B. N. Rau in January this year. Sir B. N. Rau pointed out the difficulties in the following terms :

The main difficulty is that these persons have at present no territorial connection of any kind with India, that is to say, with post-partition India, they were not born in India nor were any of their parents or grandparents born in India, nor it would seem are they in a position even to visit India for a month and declare that they intend to make India their permanent abode. If they were connected with India in any of these ways, they would be qualified for Indian citizenship under the provisions of the new Constitution, and there would be no problem. The problem arises because, in spite of having no present connection with India, they desire to become Indian citizens at once by some special process, *e.g.* by registration at the Indian Embassy in Rangoon, coupled perhaps with an oath of allegiance to India. There are two difficulties here :

- (i) Under international law, the power of a State to confer its nationality upon persons outside its territory is not unlimited, and the above suggestion—to confer nationality by mere registration coupled with an oath of allegiance—may be regarded as going beyond recognized limits.
- (ii) Pakistan may say to us. "Now that you are conferring Indian citizenship on persons who by birth and descent belong to Pakistan and do not belong even by domicile to India, we are free to do likewise. There are many Muslims in India who would like to become Pakistan citizens by registering with the Pakistan High Commissioner in India and taking an oath of allegiance to Pakistan." Of course, we may try to distinguish the two cases by pointing out that our action is limited to persons in Burma, but once we depart from a certain principle, it will not be easy to prevent other departures ... In these circumstances the most that can be done to meet the situation seems to be something on the following lines :

Let these persons make a declaration at the Indian Embassy in Rangoon that they intend to become citizens of India (by naturalization) and thereupon we may treat them for all purposes of protection as

Indian citizens. Pakistan may have no objection to this course. There was a law in the United States from 1918 to 1935 that a foreign seaman who had filed a declaration of his intention to become an American citizen was to be deemed for all purposes of protection to be an American citizen, although of course he did not actually become an American citizen until after completing naturalization.

5. In his reply of January 30, the Prime Minister pointed out that the examples which Sir B. N. Rau quoted did not really apply. Conditions created by the partition of India have no other parallel. The Prime Minister did not see any major difficulty in allowing the choice of Indian citizenship to Indian citizens overseas, but agreed that the choice should not be given to people in Pakistan or India. A copy of this reply was forwarded by the Prime Minister to Dr. Ambedkar (the Law Minister). The latter, in his reply dated February 4, stated:

I do not think that it would be impossible to allay the apprehensions of Indians by making appropriate changes in the clauses regarding naturalization in the new Bill on the Indian citizenship which we propose to promote in the near future. . .

Apparently the Law Minister proposed to make a special provision for this category of persons not in the Draft Constitution but in a separate citizenship law.

6. We cannot too much stress the need for making a special provision in the Constitution to enable this class of Indians to qualify for citizenship at the commencement of the Constitution. I suggest that we should press the suggestion of our Ambassador in Burma on the appropriate committee of the Constituent Assembly.

7. In the third category come those persons living in Burma or Ceylon or other countries in the Commonwealth, who accept the citizenship of those countries but who want to retain the right of easy reversion to Indian citizenship on retirement to India. A question of principle is involved. In the case of Ceylon we have undertaken to see that an Indian who accepts Ceylon citizenship *ipso facto* ceases to be Indian. We are, however, asked not for actual Indian citizenship but, if I may so express it, for potential Indian citizenship combined with say, Ceylon citizenship. It is not necessary to discuss the merits of the issue. The conditions under which citizenship can be acquired in future will be governed by law to be made under article 6 of the Constitution. At the appropriate time it may be considered whether it would be necessary or desirable to make a special provision for the acquisition of Indian citizenship by any particular category of persons. No action is needed now.

8. We now come to the cases of Indians living in Malaya who accept Malayan citizenship under the new Federation Constitution of Malaya. Mr. Ramani, well-known Indian Advocate of Kuala Lumpur, has submitted more than one memorandum in regard to this class of Indians. Under the

Constitution of Malayan Federation, a person who satisfies the prescribed residential test and who makes a declaration of permanent residence in Malaya and agrees to regard the Federation as his home and the object of his loyalty, will be regarded as a Federal citizen. This provision of the Malayan Constitution has not yet come into force. Mr. Ramani's apprehension is that if in fact it comes into force before the coming into effect of the Indian Constitution, then under article 5(b) such a person will be disqualified for Indian citizenship.

Mr. Ramani's point is that the Malayan Federal citizenship is not synonymous with Malayan nationality. Persons of all nationalities residing in Malaya—Chinese, British and Indians—can acquire Malayan citizenship in the manner provided in the Constitution without losing their nationality. Thus a Chinese who qualifies and opts for Malayan citizenship does not cease to be Chinese on that account. Similarly, a person of British nationality will not cease to be British merely by reason of his acceptance of Malayan citizenship. Mr. Ramani's contention is that the Indian Constitution should not automatically disqualify a person of Indian origin, who accepts the limited Malayan citizenship, from becoming an Indian citizen at the commencement of the new Constitution. Otherwise, while he would be debarred from Indian citizenship, he would not acquire the full citizenship (nationality) of any other country.

9. Mr. Ramani apparently proceeds on the assumption that an Indian accepting the citizenship of Malaya accepts the citizenship of a foreign State. So long as India is in the Commonwealth, Malaya will not be a foreign State. A person originating in India, as constituted now, will therefore acquire Indian citizenship under article 5(a), even if he has already accepted Malayan citizenship.

10. Difficulty will arise only in respect of a person originating in a territory now included in Pakistan but accepting Malayan citizenship. Acceptance of Malayan citizenship will mean that he has his domicile in that country and, therefore, under clause (b) of article 5 such a person could not acquire Indian citizenship, even if he would make the declaration and take the oath of allegiance suggested in paragraph 6. It should be possible, however, to obviate this difficulty by a suitable proviso to clause (b).

11. Persons originating in territory now included in Pakistan present their own problem. There are two categories :

(a) those who continue to reside in Pakistan, but wish to acquire Indian citizenship; and

(b) those who will have permanently migrated to India by the date of commencement of the Constitution.

Persons in category (a) cannot for obvious reasons be admitted to Indian citizenship automatically.

For persons in category (b), the condition prescribed in clause (ii) of

'Explanation' in draft article 5 is sufficiently easy. This condition need not be further relaxed.

12. To summarize:

- (i) No reference to great-grand-parents need be made in article 5.
- (ii) Special provision should be made in the Constitution to enable a person originating in a territory now included in Pakistan and living abroad (but not in Pakistan) to acquire Indian citizenship at the commencement of the Constitution, without requiring him to reside for a prescribed period in the territory of India. One suggestion is that he should declare in writing before the Indian Ambassador, Minister or Representative in an oversea country, his intention to make India his permanent home and take an oath of allegiance to India.
- (iii) A person originating in India but living abroad in a Commonwealth country will acquire the citizenship of India under article 5(a) even if he has already accepted the citizenship of his country of residence. Mr. Ramani's apprehension that Indians acquiring Federal citizenship of Malaya will be debarred from acquiring Indian citizenship is unfounded so far as persons originating in India are concerned: article 5(a). But persons originating in Pakistan and accepting Malayan citizenship will be debarred under clause (b) of article 5 in similar circumstances. If any safeguard is to be provided for them, a suitable proviso can be added to clause (b) of article 5.

13. One last point. As Ceylon is not a foreign country, persons originating in India will not be debarred from Indian citizenship even if they accept Ceylon citizenship—article 5(a). We are committed to preventing double citizenship of Indians living in Ceylon. This can be done by law to be enacted by Parliament under the new Constitution—article 6. At this stage the problem need not worry us.

(IV) FURTHER NOTE BY S. DUTT

June 16, 1949

I have come across still another file in which the specific question whether a person of Indian origin accepting Malayan citizenship would be debarred from Indian citizenship was considered. A copy of Sir B. N. Rau's letter of June 24, 1948, on this subject is placed below (*see* appendix).

2. Sir B. N. Rau mentions a proposal to define "foreign State" in the Constitution, and it appears as if a country within the Commonwealth could also be defined as a "foreign State". The letter was written in June 1948 before a decision was reached on India's relation with the Commonwealth. I suppose in the light of the recent decision a country within the Commonwealth would not be regarded as a "foreign State". In any case, if a "foreign State" is defined on the lines mentioned by Sir B. N. Rau,

there should be no difficulty on account of Indians accepting Malayan citizenship.

APPENDIX

LETTER FROM B. N. RAU TO S. DUTT

June 24, 1948

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2. It is not easy to reply to any queries arising out of the citizenship articles of the Draft Constitution, because they are constantly undergoing change and are not yet in their final form. In fact, at the moment, it seems probable that article 5 will be made more liberal than it now stands. However, I shall deal with the points raised in your letter on the assumption that the articles in the Draft Constitution remain as they are.

3. The first point you raise concerns those who have migrated to Malaya: you ask whether the fact of their having stayed there for a period of years and cultivated land in that country will be regarded as sufficient evidence of their having made their permanent abode in Malaya. The answer really turns on their *intention*: if their intention was always to return to India ultimately, the courts will probably hold that they had not made their permanent abode in Malaya. Of course intention can only be proved by some overt act; if in a particular case, the only facts proved are of residence and cultivation of land for a long period of time in Malaya and there is no other proof of intention, the courts may well infer an intention to make Malaya the permanent abode. The test is always of intention.

4. You next ask whether acceptance of Malayan citizenship will be regarded as acquisition of the citizenship of a foreign State within the meaning of article 5(b) of the Draft Constitution. We are contemplating an amendment of the article so as to make it clear that acquisition means voluntary acquisition. If, for example, a person's parents were born in "Hindustan" and he himself was born in Malaya, he is a citizen of India under article 5(a) of the Draft Constitution; but it may be that by Malayan law any person born in Malaya, wherever his parent may have been born, is in certain circumstances a "Federal" citizen of Malaya. In that event the person in question may be a Malayan "Federal" citizen as well, but since he acquires that citizenship not by any voluntary act of his own but by the automatic operation of the law of Malaya, he will not lose his Indian citizenship. To give another example, when the British Nationality Bill becomes law, any person who is by the law of India a citizen of India is automatically a British subject as well. This will not be regarded as voluntary acquisition of British nationality or citizenship so that he will not lose his Indian citizenship; he will continue to be an Indian citizen by Indian law and a British subject by the law of the United Kingdom. If an Indian citizen in Singapore has registered himself as a voter in his capacity as a British subject I do not myself think that he has voluntarily acquired the citizenship of a foreign State: mere registration for purposes of voting cannot be said to be acquisition of a new citizenship. To meet the point that Malayan "citizenship" is not the kind of citizenship that ought to interfere with nationality, we are proposing a definition of "foreign State" in our Draft Constitution as meaning any State other than India, but not including such other States as may be notified by the President in this behalf. The President of the Indian Union can then notify Malaya and any similar States, so as to exclude them from the definition.

5. Your last question is whether the Government of India will undertake legislation before the commencement of the new Constitution to enable persons residing in Malaya to acquire Indian citizenship by declaring their intention in writing before India's Representative in Malaya. I have probably already answered a similar question with regard to Burma. The intention of the citizenship articles of the new Constitution is that no person should, at the inception of the new Constitution, be a citizen of India unless he is connected with the territory of India by birth, or descent, or domicile. It is not the intention that persons unconnected with the territory of India in one of these ways should, merely by making a statement before some authority outside India, qualify for citizenship. If a person was not born in India and was not born of parents or grand parents born in India it is necessary that he should at least acquire a domicile in India by declaring his intention before a magistrate in India and by residing in India for at least one month before the date of the declaration. In this connection, I would invite your attention to paragraph 4 of the Chairman of the Drafting Committee's letter* to the President of the Constituent Assembly printed in the Draft Constitution.

6. As I have already said, the citizenship articles are not yet in their final form. When the Constitution has been finally passed, it may be possible for us to prepare a note on the subject for the information of Indians resident abroad.



PART SEVEN
ELECTION COMMISSION



PROVISIONS REGARDING THE ELECTION COMMISSION

[The Draft Constitution as settled by the Drafting Committee on February 21, 1948, provided for separate Election Commissions for the Centre and for each of the States. This was in accordance with the decisions already taken by the Constituent Assembly when considering the Reports of the Union Constitution Committee and the Provincial Constitution Committee.]

The Secretariat of the Constituent Assembly in a note dated May 14, 1949, pointed out that there was a growing feeling that the interests of the country would be best served if there were only one all-India Commission controlling all elections, Central as well as Provincial. A single electoral authority controlling all elections in India would have the advantage that the electoral procedure and practice adopted would be uniform for all the units of the Union. The Drafting Committee accepted the suggestion. When the matter came up for discussion in the Constituent Assembly on June 15, 1949, Ambedkar introduced a new article which made provision for a single Central Election Commission to be in charge of Central and State elections.

The note prepared by the Secretariat of the Assembly is reproduced below.]

NOTE ON ELECTION COMMISSION BY THE SECRETARIAT OF THE CONSTITUENT ASSEMBLY

May 14, 1949

AT ITS MEETING held on January 8, 1949 the Constituent Assembly passed a resolution giving certain directions regarding the electoral work to be done under the new Constitution¹. This resolution was really in the nature of regularizing action already taken by the Constituent Assembly Secretariat in this behalf and to enable further necessary steps to be taken in connection with the holding of the elections under the new Constitution. The work relating to the preparation of the preliminary electoral rolls is progressing

¹For text of the resolution, see *C. A. Deb.*, Vol. VII, p. 1387.

satisfactorily. In some of the Provinces the printing of the rolls has already started.

The further question which naturally arises at the present stage is what machinery should be employed to implement the direction of the Constituent Assembly. This is a matter which requires careful consideration. It has been hinted in a section of the press that in some Provinces the Governments in power are showing more anxiety to register their own supporters in the electoral rolls than for the registration of those who are opposed to them. In bye-elections to Provincial Assemblies which have been recently held it has been freely alleged by members of the losing party that the Provincial Governments concerned have taken undue advantage of their position in the conduct of the elections. Without going into the question of the correctness or otherwise of these allegations, it may be readily conceded that the machinery to be set up to direct and control the elections under the new Constitution should be an impartial and independent body, above party politics, so as to avoid giving ground for any suspicion of the nature mentioned.

Indeed the need for securing such impartiality and for avoiding even the appearance of any party bias in a matter of such great importance has been recognized by the framers of the Draft Constitution and it is this recognition that has led to the insertion of the provision contained in article 289 for the appointment of an Election Commission whose duty it will be to superintend, direct and control all elections to Parliament and elections to the offices of President and Vice-President, including the appointment of Election Tribunals. This is also in accordance with decisions already taken by the Constituent Assembly while considering the Report of the Advisory Committee on Fundamental Rights and the Report of the Union Constitution Committee as will be seen from what follows :

The Fundamental Rights Sub-Committee and the Minorities Sub-Committee had recommended to the Advisory Committee that a clause on the following lines should be included in the list of fundamental rights :

The superintendence, direction and control of all elections to the Legislature, whether of the Union or of a unit, including the appointment of Election Tribunals, shall be vested in an Election Commission for the Union or the unit as the case may be, appointed in all cases in accordance with the law of the Union.

The Advisory Committee, while agreeing in principle with this clause, recommended that instead of being included in the list of fundamental rights, it should find a place in some other part of the Constitution (*vide* paragraph 9 of the letter¹ of the Chairman of the Advisory Committee forwarding the interim report on fundamental rights). This recommendation of the Advisory Committee was specifically put to the Assembly on 2nd May 1947.

¹See Vol. II. Document No. 7(i).

and was adopted¹. Accordingly the following clause (clause 24) was inserted in the Report² of the Union Constitution Committee :

Superintendence, Direction and Control of Elections: The superintendence, direction and control of all elections, whether Federal or Provincial, held under this Constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections, shall be vested in a Commission to be appointed by the President.

In introducing this clause in the Constituent Assembly on 29th July, 1947, Shri Gopalaswami Ayyangar observed³ as follows :

The object of this clause, Sir, is to ensure as far as possible that elections in the country, Federal or Provincial, are conducted in an impartial manner. The idea is to set up a Commission appointed by the President under whose auspices all these various aspects of election activities and post-election activities will be regulated and controlled. As the House is aware, the abuse of election procedure, of the election machinery and the prevalence of corruption in elections—these are complaints which are widely made in the country and this clause is merely an attempt to bring all these election activities under a common centralized independent control.

Shri H. V. Pataskar moved⁴ an amendment to this clause seeking to substitute the words "all Federal elections" for the words "all elections" and to omit the words "whether Federal or Provincial". He explained that the purpose of his amendment was that so far as the elections to the Federal Legislature were concerned, the superintendence, direction and control should vest with the President, but so far as Provincial elections were concerned, that should be left to the Governor of the Province or to some other appropriate authority in the Province itself.

In the course of the general discussion that followed, the Honourable Dr. Ambedkar in supporting the clause made the following observations⁵ : Although this clause appears in the Constitution which deals with the Union, as a matter of fact this matter was dealt with by the Fundamental Rights Committee. The Fundamental Rights Committee came to the conclusion that no guarantee regarding minorities or regarding elections could be given if the elections were left in the hands of the executive of the day. Many people felt that if the elections were conducted under the auspices of the executive authority and if the executive authority did have power, as it must have, of transferring officers from one area to another with the object of gaining support for a particular candidate who was a favourite with the party in office or with the Government of the day, that

¹C. A. Deb., Vol. III, p. 529.

²See Vol. II, Document No. 18(i).

³C. A. Deb., Vol. IV, p. 971.

⁴Ibid., p. 971.

⁵Ibid., pp. 973-4.

will certainly vitiate the free election which we all wanted. It was therefore unanimously resolved by the members of the Fundamental Rights Committee that the greatest safeguard for purity of election, for fairness in election, was to take away the matter from the hands of the executive authority and to hand it over to some independent authority.

To a point raised by Shri Santhanam that the effect of the creation of such an independent Commission might be to encroach on the legitimate sphere of the Provincial and Central executives, Shri Gopalaswami Ayyangar replied¹ :

I need only point out that what this clause provides for is only superintendence, control and direction. The actual conduct of elections, the executive machinery that may be required for conducting them and so on will have to be mobilized through the respective Provincial Governments. The superintendence or control will come in, for instance, in regard to the location of polling stations or the selection of polling officers, methods of voting and the safeguards that have to be provided for any breach of the principle of secrecy in the ballot and so on. It is necessary that matters of this sort are properly and impartially done. Otherwise they may lead to injustice, corruption and so on. Such matters should, therefore, be in the hands of an impartial tribunal of this description.

The clause was ultimately adopted² subject to the amendment proposed by Shri Pataskar.

It will thus be seen that article 289 of the Draft Constitution merely gives effect to the decision already reached by the Assembly as embodied in the clause referred to above.

The provision in the Draft Constitution, as it stands now, contemplates separate Election Commissions for the Centre and for each of the Provinces. There is, however, evident in recent months in certain parts of the country a growing feeling that the interests of the country would be best served if there were to be only one all-India Commission controlling all the elections, Central as well as Provincial. If the Constitution for the Indian States is also to form an integral part of the Draft Constitution for the Centre and the Provinces—as has been suggested in responsible quarters—the elections to the Legislatures of these States can also be brought within the purview of this Central Commission. It has been suggested that a single electoral authority controlling all elections in India will have the advantage that the electoral procedure and practice adopted will be uniform for all the units of the Union. It may well be that the Central Commission will appoint Regional Commissions to be in charge of the elections in the several units.

It would be necessary, before appointing a Commission of the nature envisaged above, that the relevant provisions in the Draft Constitution

¹*C. A. Deb.*, Vol. IV, p. 976.

²*Ibid.*, p. 977.

should be approved by the Constituent Assembly with necessary modifications. As a matter of fact, during the last session itself, there was a proposal that articles 289-291 (relating to the conduct of the elections) should be passed by the Assembly along with the other provisions relating to electoral matters. However, owing to lack of time, these articles could not be reached. It was accordingly suggested to the Steering Committee that when the Constituent Assembly reassembled on 16th May, 1949, it should straightway proceed to consider such of the provisions in the Draft Constitution relating to electoral matters as had not been agreed to so far and adopt them with the necessary modifications for vesting the entire electoral work in a single Commission.

After these articles are adopted, it will be necessary for the Assembly to take steps for the appointment immediately of an interim Election Commission, pending the coming into operation of the new Constitution, so that the directions contained in the resolution of the Assembly of 8-1-1949 already referred to can be fully implemented. For this purpose it is proposed that the Assembly should adopt a further resolution in the following terms :

Whereas in pursuance of the resolution of the Constituent Assembly of India of January 8, 1949 steps have already been taken for the preparation of electoral rolls under the new Constitution ;

And whereas the time has now arrived to set up the necessary election machinery so that the further directions regarding the holding of the elections contained in the said resolution may be implemented ;

It is hereby resolved that pending the coming into operation of the new Constitution, the President of the Constituent Assembly of India be authorized to appoint an interim Election Commission whose duty it shall be to superintend, direct and control all elections in terms of article 289 of the Draft Constitution of India agreed to by the Assembly.

When the resolution is passed by the Assembly, the President will request the Government to make, as in the case of the Constituent Assembly, a lump sum grant for the Commission's support so that its independent status may be maintained. In all matters where Government's sanction is required or when further expenditure on behalf of Government has to be incurred, this body will consult the appropriate Ministry of the Government.

The Steering Committee, which considered this proposal, agreed that while the principle contained in it should be left to the Assembly to decide, the consideration of the articles in the Draft Constitution relating to electoral matters should be taken up first by the Assembly at its next session. It is thus that these articles appear on the Order Paper for the 16th May, 1949.

The provision in the Draft Constitution relating to the Election Commission may be compared with the provision in the Canadian Dominion Elections Act of 1920, under which there is a Chief Electoral Officer to exercise general direction and supervision over the conduct of elections with a view to ensuring fairness and impartiality. Under that Act (section 19) it has

been provided that he "shall hold office on the same tenure, be removable only for cause and in the same manner and be from time to time paid the same salary and superannuation allowance as a puisne judge of the Supreme Court of Canada". His duties and powers are defined as follows :

In addition to the exercise of the powers and the performance of the duties with respect to elections which until the passing of this Act were exercisable and performable by the Clerk of the Crown in Chancery, he shall and may,—

- (a) throughout every election properly direct all returning officers and, in case of incompetency or neglect of duty on the part of any of them, recommend his removal and the appointment of another in his stead ;
- (b) exercise general direction and supervision over the administrative conduct of elections with a view to ensuring the fairness and impartiality of all election officers and compliance with the provisions of this Act ;
- (c) report to the House of Commons, through the Speaker, after an election, any matters arising in the course of the election an account of which ought, in his judgment, to be submitted to the House of Commons ;
- (d) subject to the performance of the foregoing duties, act as counsel for the Crown or the Attorney-General in such causes, prepare such opinions, and make such enquiries as the Governor in Council may from time to time direct.

Certain aspects of the changes in the electoral machinery brought about by the Canadian Elections Act of 1920 have been discussed by Dawson in his book "*Constitutional Issues in Canada, 1900-1931*" and these make interesting reading¹ :

We have already taken our electoral officials partly out of party politics. The Election Act of 1920 created the office of the chief electoral officer, who is appointed by and responsible to Parliament rather than the Government of the day. He was given a tenure of office of ten years, during which he could only be removed like a judge of a Superior Court, that is, by address of both Houses of Parliament. More recently the returning officer, the principal electoral officer in each constituency, was made a permanent official and his appointment and, apparently, removal laid upon the chief electoral officer. These officials—the chief electoral officer of the Dominion and the local returning officers—might well be used for purposes of enforcing publicity of accounts. In the first place they should be given compulsory powers to enable them to compel candidates and parties to make returns of their accounts. In the second place, the chief electoral officer should be required to examine and pass upon the sufficiency of accounts rendered, to report any omissions or insufficiencies to Parliament, and, as at present with regard to other phases of the Election

¹Dawson, *Constitutional Issues in Canada, 1900-1931*, pp. 217-8.

Act, to report to Parliament any other matters he might think fit together with recommendation for appropriate action.

In South Africa, under section 38 of the Constitution Act, provision was made for the creation of an *ad hoc* joint commission consisting of judges of the Supreme or High Courts of the colonies for the purpose of dividing each Province into electoral divisions or, in other words, for delimiting the constituencies. The Commission was empowered under the same section to regulate their own procedure and to act by a majority of their number. Section 41 of the Constitution also provided for the appointment after every census of a commission of three judges of the Supreme Court of South Africa to carry out any redivision which might become necessary as between the different electoral divisions in each Province.



PART EIGHT
THE INDIAN STATES



MAKING THE CONSTITUTION APPLICABLE TO THE INDIAN STATES March-October 1949

[The Indian States entered the Constituent Assembly of India on the basis that they would accede to the Union of India by suitable instruments, and that the internal constitutions of these States would be framed by their own Constituent Assemblies. In the Covenants relating to the formation of Unions of States, provision was therefore made for setting up local Constituent Assemblies each of which would frame a constitution for the particular Union within the framework of the Covenants and of the Constitution of India. The Draft Constitution as settled by the Drafting Committee in February 1948 did not therefore provide for the internal constitutions of these States.]

It was however soon realized that, if each Indian State or Union of Indian States was to frame its own constitution without any guidance from the Centre, there might be such large differences among them as to result in a veritable jig-saw puzzle especially because of the likely development of local pressures. In order, therefore, to ensure that the constitutions of these Unions were drawn up on a uniform basis and that they generally followed the pattern of the Provincial Constitution, a committee with B. N. Rau as Chairman was appointed to prepare a model constitution to serve as a guide in framing the constitution for the respective States. The committee submitted its report on March 22, 1949. The committee generally followed the provisions in the Draft Constitution relating to Provinces with certain essential variations to suit the position of the Unions of States. Shortly after the committee submitted its report further changes in regard to these States took place.

The report of the committee for the drafting of a model constitution for the Indian States encountered certain practical difficulties. At that time Constituent Assemblies had not been set up in Rajasthan, PEPSU, Vindhya Pradesh and Madhya Bharat because the newly formed popular governments set up in these Unions were still grappling with the initial problems presented by the integration of several States. The need to get the new constitution functioning in all the States became one of urgency since the Constitution for the whole of India was to come into force in January 1950. As the States came closer to the Centre, it became clear that the idea of separate constitutions being framed for different constituent units of the Indian Union was a legacy from the Rulers' polity which could have no place in a democratic

set-up. The matter was, therefore, further discussed by the Ministry of States with the Premiers of Unions and States on May 19, 1949 and it was decided, with their concurrence, that the constitutions of the States should also be framed by the Constituent Assembly of India and should form an integral part of the Constitution of India; and that an appropriate procedure should be decided upon for the ratification of the whole of the Constitution of India by the States and Unions, along with the part relating to the internal constitution of the States. Accordingly the Ministry of States appointed a committee consisting of M. K. Vellodi, Secretary, Ministry of States (Chairman), N. Dandekar, Member, Indian States Finances Enquiry Committee and S. N. Mukerjee, Joint Secretary, Constituent Assembly Secretariat, to examine the Draft Constitution of India and suggest amendments to be incorporated in it with a view to placing the States and the Unions of States on the same footing as the Provinces both in respect of their internal set-up and their relationship with the Indian Union. The amendments proposed by this committee were discussed with the Drafting Committee and this committee eventually finalized these amendments. The amendments, as they emerged as a result of the discussions with the Drafting Committee, were examined by the constitution-making bodies of the States where such bodies were in existence, namely, Saurashtra, Travancore-Cochin and Mysore. They were accepted by these Constituent Assemblies with certain minor amendments. After the concurrence of all the States was obtained to the Constituent Assembly of India itself framing a constitution for the whole of India including the Indian States, the necessary amendments were moved on behalf of the Drafting Committee in the Constituent Assembly. The following documents are included in this part : (i) report of the committee for the drafting of a model constitution for the Indian States; (ii) note prepared by the Ministry of States explaining the decisions regarding the Indian States; and (iii) Vallabhbhai Patel's speech in the Assembly, October 12, 1949.]

(I) REPORT OF THE COMMITTEE FOR THE DRAFTING OF A MODEL
CONSTITUTION FOR THE INDIAN STATES

March 22, 1949

To

The Secretary to the Government of India,
Ministry of States.

SIR,

On behalf of the Committee appointed to draft a Model Constitution for the States specified in Part III of the First Schedule to the Draft Constitution of India, I have the honour to submit this our Report.

2. It was originally intended that the committee should consist of the following four members :

Mr. B. N. Rau,
Mr. K. M. Munshi,
Mr. P. Govinda Menon, and
Dr. R. U. Singh.

The following four representatives of the States in the Constituent Assembly of India were subsequently added to the number :

Mr. Ram Sahai,
Mr. K. Hanumanthaiya,
Mr. R. Shankar, and
Mr. C. C. Shah.

3. We met on the 1st January, 16th February, 5th, 6th, 20th, 21st and 22nd March, 1949, to settle the terms of the Draft (Appendix)*. We hope that this Draft will serve as a guide to the constitution-making bodies of the States in framing the constitution for the respective States.

4. In preparing the Draft we have assumed that the Indian States will accede to the Union of India by suitable instruments in respect of all subjects in the Union and Concurrent Lists, and we have for the most part followed the provisions in the Draft Constitution of India relating to the Provinces. There are, however, some matters in respect of which we have thought it necessary to suggest variations. The most important of these variations are dealt with in the paragraphs that follow.

5. *Article 1* : This corresponds to article 129 of the Draft Constitution of India, and declares the Ruler to be the head of the State deriving his position from the will of the people. But just as it is proposed that the Governor of each Province is to be appointed by the President, so too the Ruler has been defined to be the person for the time being recognized by the President as the Ruler of the State. Accordingly, no provision corresponding to article 138 of the Draft Constitution of India has been included in our Draft.

6. *Article 2* : We consider this to be a slight improvement on the corresponding provision in clause (1) of article 130 of the Draft Constitution of India, since it provides explicitly that the Ruler may exercise the executive power of the State either himself *or through officers subordinate to him*. Otherwise, it might be construed as requiring the exercise of the executive power of the State in every case by the Ruler himself, which would create practical difficulties in the administration of the State.

7. We doubt whether a provision for the impeachment of the Ruler by

*Not reproduced. The Draft closely followed the provisions of the Draft Constitution as settled by the Drafting Committee: and shortly after the report of the committee was submitted, it was decided to devise suitable arrangements under which the constitutions of the Indian States would form an integral part of the Constitution of India.

the Legislature for violation of the Constitution is necessary in view of the definition of the Ruler as the person who is for the time being recognized as such by the President. In the event of misbehaviour, the President may be trusted to withdraw his original recognition and to recognize a suitable successor.

8. *Article 9*: This article has been drafted in two alternative forms : the first alternative is for States which desire to have bicameral Legislatures and the second for those which desire to have unicameral. If the latter alternative is adopted, consequential modifications will be required in certain other articles : these are indicated in Appendix II* to this Report.

9. *Article 11*: As we do not yet know the manner in which the Provincial Legislative Councils are going to be constituted, we have left the composition of the State Legislative Councils to be determined by Parliament, the object being to ensure uniformity in this regard throughout India.

As desired by some of the members of the committee, the constitution and powers of the second chamber in Norway are given in Appendix III* to this Report.

10. *Article 16*: As circumstances may arise in which a Ruler may not be able to address the Legislature in person, we have proposed that the address may either be by the Ruler himself or through his Chief Minister.

11. *Article 39*: In the Provinces, the salary and allowances of the Governor are charged on the revenues and do not require to be voted each year. Similarly, we have provided that the salary and allowances of the Ruler of an Indian State shall be charged on the State revenues. There is, however, a difference as to the authority for determining the amount to be charged in the two cases. In the case of Governors, the amount is to be determined by a law of the Provincial Legislature and, until so determined, is to be the figure prescribed in the Second Schedule to the Draft Constitution of India. We have not found it possible, for the following reasons, to recommend a similar provision in the case of Rulers. The salary and allowances of the Rajpramukh of a Union of States are prescribed in the covenant creating the Union; and the Government of India have guaranteed the provisions of the covenant. The Government of India being thus concerned in the matter, we could hardly lodge the power to fix salaries etc. in the Legislature of the State. We have therefore given this power to the President. In fixing the amount to be charged, the President will doubtless consider the terms of the covenant in the case of Unions of States; and in the case of single States, where there is no covenant, he will doubtless be guided by the views of the Government and the Legislature of the State.

12. *Article 54*: In order to qualify for appointment as High Court judges,

*Not reproduced.

persons who have held judicial office in a State which has since become part of a Union of States we have worded sub-clause (a) of clause (2) as follows: "(a) has held for at least ten years judicial office *in India*."

Similar phraseology has been used in clause (b) also.

13. *Article 73*: It was brought to our notice by the Secretary of the Indian States Finances Enquiry Committee that in certain Unions it might become necessary to appoint Auditors-in-Chief immediately after the commencement of the new Constitution and that the restriction that no such appointment shall be made until the expiration of three years from the date of the Acts creating the appointments, though necessary in the case of Provinces, was unnecessary in the case of the Indian States. We have accordingly omitted the restriction.

14. *Article 95*: Departing from the provision in clause (2) of article 289 of the Draft Constitution of India, we have proposed that the members of the Election Commission should be appointed by the President. This will avoid any local bias.

15. *Article 97A*: We have included in the Draft a provision complementary to the provision recently introduced in the Government of India Act, 1935, as section 290-B. We presume that a provision similar to the aforesaid section 290-B will also be included in the Constitution of India.

16. *Article 99*: According to the Draft Constitution of India, a Bill for amendment of the Constitution can be initiated in a Provincial Legislature only in respect of two subjects, namely, (1) the method of choosing the Governor and (2) the number of Houses in the Legislature. As the Constitutions of the Indian States are ordinarily to be made by their own Constituent Assemblies, it has been proposed that the State Legislatures should have power to initiate any amendments to those constitutions.

17. *Article 104*: In this article, we have provided for the contingency in which the work of constitution-making is entrusted to the ordinary Legislature and not to a Constituent Assembly specially set up for the purpose.

18. *Third Schedule, paragraph 3*: There is a substantial difference of opinion among the members of the committee as to the wording of this paragraph in the case of the Indian States. Some of us are of the view that the wording should be the same as in the case of the Provinces, namely:

In all matters within the scope of the executive power of the State, the Ruler shall, in the exercise of the powers conferred upon him, be guided by the advice of his Ministers.

Others consider that in view of the present conditions, the wording in the case of the Indian States should be as follows:

The Ruler shall, in the exercise of the powers conferred upon him by this Constitution, be guided by the advice of his Ministers.

19. In accordance with Mr. Hanumanthaiya's wishes, we record here his

views on certain paragraphs of this report:

Paragraph 5: Mr. Hanumanthaiya considers that the authority for recognizing the Ruler should be the Legislature of the State concerned and not the President.

Paragraph 7: Mr. Hanumanthaiya thinks that even if the recognizing authority is to be the President, there should be a provision in the Constitution for the impeachment of the Ruler by the State Legislature.

Paragraph 9: Mr. Hanumanthaiya suggests that if there is to be a second chamber in an Indian State, it should be based on indirect election; the primary voters should elect Village Panchayats, these should elect District Panchayats, and these in their turn should elect the members of the second chamber.

Paragraph 11: Mr. Hanumanthaiya is of the view that the salary and allowances of the Ruler should be determined by a law of the State Legislature and not by the President.

Paragraph 14: Mr. Hanumanthaiya desires that the members of the State Election Commission should be appointed by the Ruler instead of by the President.

Paragraph 18: Mr. Hanumanthaiya holds that the powers of the State Legislature should be as full as those of the House of Commons except in so far as they have been surrendered or limited by the Instrument of Accession. He accordingly proposes that paragraph 4 of the Instrument of Instructions in the Third Schedule, which requires the Ruler to reserve certain Bills affecting the powers of the High Court for the consideration of the President, as in the case of Provinces, should be omitted. Similarly he suggests that in the Draft Constitution the words "Subject to the provisions of the Constitution of India", wherever they occur, should be replaced by the words "Subject to the Instrument of Accession". He further considers that the power to appoint and dismiss judges of the High Court should rest with the Ruler and not the President.

20. We have already dealt with most of these points in our Report and would only add that in framing the Draft we have not thought it right to ignore commitments already entered into or decisions already arrived at. Thus, where a Union of States has been brought into being by a Covenant, we have necessarily had to bear in mind the provisions of the Covenant. Again, we believe that it has already been decided that the Constitutions of Indian States should, as far as possible, follow the provincial pattern and we have accordingly assimilated the provisions of the present Draft to the corresponding provisions of the Draft Constitution of India. References to Instruments of Accession have therefore been reduced to a minimum. Mr. Hanumanthaiya evidently contemplates an Instrument of Accession which bars the operation of whole articles or whole groups of articles of the Constitution of India in the Indian States.

The other members of the committee have been unable to accept this or any other feature of Mr. Hanumanthaiya's scheme.

21. If the Constitution proposed in the present Draft is accepted generally by the various Constitution-making bodies in the Indian States, the best mode of giving effect to the proposals would be to insert a special Part in the Draft Constitution of India to deal with constitutions of the Indian States. This Part would provide in effect that the provisions relating to provinces shall apply to the Indian States subject to certain specified variations to be set out in a separate Schedule to the Constitution.

DELHI,
March 22, 1949.

Yours truly,
B. N. Rau,
Chairman.

(II) NOTE BY THE MINISTRY OF STATES EXPLAINING THE
DECISIONS REGARDING THE INDIAN STATES
July 1949

When the States entered the Constituent Assembly of India, it was thought that the Constitutions of the States would not form part of the Constitution of India. It was also clearly understood that unlike the Provinces the accession of the States to the Indian Union would not be automatic but would be by means of some process of ratification of the Constitution. In the context of these commitments and the conditions then obtaining the framers of the Draft Constitution of India made certain special provisions which placed the States, in certain important respects, on a footing different from that of the Provinces.

2. As a result of the policy of integration and democratization of States pursued by the Government of India since December, 1947, the internal and external set-up of the States has undergone a radical change; these changes have greatly accelerated the process of approximating the position of the States, both in respect of their internal structure and their relationship with the Centre, to that of the Provinces, a task which has been engaging the States Ministry's constant attention.

3. The Covenants establishing the various Unions of States provide that within the framework of the Covenant and the Constitution of India, the constitutions of the various Unions are to be framed by their respective Constituent Assemblies. In order to ensure that the constitutions of the Unions of States are drawn up on a uniform basis and generally follow the Provincial Constitution, a committee was appointed with Shri B. N. Rau as Chairman to draft a model constitution for the States which was to serve as a guide to the Constitution-making bodies of the States in framing the Constitution for their respective States. Subsequently, as a result of the discussions that the Ministry of States had with the Premiers

of the various Unions, it was decided that the constitution of the States should also form an integral part of the Constitution of India and that appropriate procedure should be devised for the ratification of the whole of the Constitution of India by the States and Unions along with the part relating to the internal constitution of the States.

In view of these important developments it has become necessary to recast a number of the provisions of the Constitution in so far as they relate to the Indian States. The Ministry of States have already discussed with the Drafting Committee the amendments which they would like to have incorporated in the new Constitution, and agreement has been reached on a large number of them. Some of the amendments, however, required further examination; this has now been done and the views of the Government of India in the Ministry of States in respect of them are set out in the following paragraphs.

(i) *Procedure for the ratification of the Constitution by the States:* The Draft Constitution of India contains no specific provision regarding the procedure for the ratification of the Constitution by the States although article 225 of the Draft Constitution presupposes some kind of agreement or instrument in respect of the accession of the States.

After detailed examination of the various aspects of the matter, the Government of India in the Ministry of States have decided that the acceptance of the Constitution, of which the new chapter relating to States included in Part III of the First Schedule should be an integral part, should be by the Rajpramukh or the Ruler, as the case may be, on the basis of a resolution to be adopted by the Constituent Assembly or the Legislature of the Union or the State concerned where such a body exists. In the Unions where no Constituent Assemblies have yet come into existence, the Rajpramukh should accept the Constitution, but in his proclamation or any other instrument for the acceptance of the Constitution, a provision should be made enabling the first Legislature of the Union to recommend, within the framework of the Constitution of India, any modifications in the provisions of the Constitution in so far as they apply to the States. This formula has been evolved to meet the difficulty arising out of the fact that constitution-making bodies are not likely to come into existence in some of the Unions by the time the new Constitution is to come into operation. The objective underlying the proposed arrangement is that whereas the whole of the Constitution will become operative in all the States and the Unions as soon as it comes into force, it will be a good political gesture to the popular opinion in the Unions in which no Constituent Assemblies have yet come into existence, if their first Legislatures are enabled to express their views on such provisions of the Constitution as are not considered fundamental. These views will assume the form of recommendations and it will be open to the Union Parliament, which is expected to exercise constituent powers for a period of five years

or so, to accept or reject them. This arrangement will be in conformity with the spirit of the Covenants establishing the various Unions which specifically empower the Constituent Assemblies of the Unions to frame constitutions for the various Unions.

(ii) *Position of Hyderabad*: In view of the special difficulties arising in respect of Hyderabad, the Government of India have examined several alternatives as to the position that should be assigned to this State in the Constitution. The suggestion which was provisionally placed before the Drafting Committee on behalf of the Ministry of States at its meeting held on 19th July was that we might secure an Instrument of Accession or a Proclamation from the Nizam authorizing the Constituent Assembly to frame a constitution for Hyderabad in the same manner as the heads of other States would adopt. However, having regard to our commitments, we might make Hyderabad's accession a provisional one and specifically state that the accession of the State will be subject to ratification by the people of Hyderabad. It is considered that this procedure would not be inconsistent with our past pronouncements on the political future of Hyderabad and would, at the same time, enable us to include Hyderabad in the category of Part III States. The Ministry of States have been definitely of the view that in the new Constitution Hyderabad should be shown as forming part of the territory of India.

During the course of the discussions on the subject at the meeting of the Drafting Committee, certain other alternatives were also suggested. One suggestion was that we might have a separate category of States classed as Part V and make a special provision in respect of these States. Sikkim might be another State to be put in this category. These States might be in the nature of protected States to be governed on the basis of agreements ensuring their virtual accession in respect of the three subjects of Defence, Foreign Affairs and Communications. The third alternative which was considered was that the State might be governed by article 236, which enabled the Union to undertake executive, legislative or judicial functions in an Indian State not specified in the First Schedule. This article provides for the exercise of jurisdiction in relation to any territory not being part of the territory of India. There was a further suggestion that the State might be put in Part II (Chief Commissioners' Provinces) of the First Schedule.

The Government of India have considered the various alternatives and are of the view that it was necessary to treat Hyderabad as part of the territory of India and that the proposal already placed by the Ministry of States before the Drafting Committee would meet best the requirements of the case.

(iii) *Position of Jammu and Kashmir State*: The Government of India have also carefully considered the position of Jammu and Kashmir State in the context of their international commitments. Ordinarily, they would

have liked to treat this State like other States in the category of Part III States. The main difficulty in adopting this procedure is that the Premier of this State has definitely expressed his inability to extend the content of the accession of the State till the Constituent Assembly of the State has taken a decision in the matter. Against the present background, he is most anxious that the accession of the State should continue in respect of three subjects of Defence, Foreign Affairs and Communications only. During the course of the discussion at the Drafting Committee meeting, it was pointed out that the scheme embodied in the Draft Constitution visualized that all States in Part III would accept List I and List II and in addition accept all provisions relating to fundamental rights and the provisions relating to High Courts and Supreme Court. It was further pointed out that if the quantum of accession of Kashmir State was not extended, difficulties would arise in respect of the citizenship of the subjects of Kashmir State as also in connection with the operation of the provisions regarding fundamental rights and Supreme Court in respect of this State. The Government of India have considered the matter in its various aspects and are of the opinion that in view of the present peculiar situation in respect of Jammu and Kashmir State it is desirable that the accession of the State should be continued on the existing basis till the State could be brought to the level of other States. A special provision has therefore to be made in respect of this State on the basis suggested above as a transitional arrangement. It may be added that 'naturalization' is already covered by the existing Instrument of Accession signed by the Ruler of the State and this may perhaps meet the requirements in respect of citizenship of the subjects of this State.

The Ministry of States suggest for the consideration of the Drafting Committee the following approach to this question:

- (1) Jammu and Kashmir State may be treated as part of Indian territory and shown in States specified in Part III of Schedule I.
- (2) A special provision may be made in the Constitution to the effect that until Parliament provides by law that all the provisions of the Constitution applicable to the States specified in Part III will apply to this State, the power of Parliament to make laws for the State will be limited to the items specified in the Schedule to the Instrument of Accession governing the accession of this State to the Dominion of India or to the corresponding entries in List I of the new Constitution.

(iv) *Privy Purse payments*: Under the terms of the covenants and agreements of merger, the Government of India have guaranteed to the Rulers of the merged and integrated States payment of the privy purse amounts fixed under the terms of these covenants and agreements. As a result of the fixation of the Rulers' privy purse on a reasonable and clear-cut basis, there has been a very considerable saving in respect of the

expenditure incurred in the past on the Rulers and members of their families. Even though there had been belated and half-hearted efforts by the late Political Department to lay down some kind of scale to govern the privy purse of the Rulers, in most of the States there was no distinction between the expenditure on the administration and the Rulers' privy purse, and even where the Rulers' privy purse had been fixed, no effective steps were taken to ensure that no expenditure expected to be covered by the privy purse was directly or indirectly charged on the revenues of the State. Large amounts, therefore, were spent on the Rulers and members of the ruling family and marriage functions and ceremonies connected with them. All the agreements of merger and covenants now provide for the fixation of the Rulers' privy purses which are intended to cover all the expenses of the Rulers and their families including the expenses on their residences, marriages and other ceremonies, etc. The privy purse guaranteed under these agreements is less than the percentage for the Deccan States under the award given by Dr. Rajendra Prasad, Shri Shankarrao Deo, and Dr. Pattabhi Sitarammaya. It is calculated on the basis of 15 per cent on the first lakh of average annual revenue of the State concerned, ten per cent on the next four lakhs and seven and a half per cent on the revenue above five lakhs, subject to a maximum of ten lakhs. The maximum figure of ten lakhs has been exceeded only in the case of some of the major States, which had been recognized as viable and the amounts fixed in such cases are payable during their life-time only. It is estimated that as a result of the integration and the merger of the States, there will be an annual saving of several crores on the expenditure incurred on the Rulers and their families. It may also be added that large amounts of cash balances and securities have been surrendered by the Rulers to the successor Government.

During the course of the discussions with the Indian States Finances Enquiry Committee, it was urged before the committee by most of the States that the liability for paying privy purses of Rulers should be taken over by the Centre on the grounds that (1) privy purses have been fixed by the Centre; (2) privy purses are political in nature; and (3) similar payments are not made by Provinces. The States have been generally averse to their fiscal integration as it involves, from their point of view, surrender of their fiscal autonomy. The main ground on which we have urged the States to fall in line with the Provinces under the new set-up has been that under the new Constitution there should be no distinction between the Provinces and the States either in the political or in the fiscal field. So far as the Provinces are concerned, there is also reluctance on their part to take over the additional burden relating to privy purses.

Under the terms of the covenants establishing the various Unions of States and agreements of merger, privy purses are payable to the Rulers out of the revenues of the States concerned, and the position of the Government

of India is that of a guarantor. This position has been somewhat altered by subsequent developments. In the first instance, so far as the merged States are concerned, with their total extinction, under the new Constitution of India, as separate entities, the States from the revenues of which privy purses are payable to the Rulers of merged States, will cease to exist. Secondly, the term 'revenues of the State' has now to be viewed in the context of the recommendations made by the Indian States Finances Enquiry Committee. Federal financial integration of States, as worked out by this committee, involves a twofold process, one of 'functional partition' of the 'composite' State Governments and the other, of 'merger' of the partitioned 'federal' portions of the State Governments with the Central Government. Essentially, therefore, the matter has to be viewed in the light of the fiscal integration of the States, which will have an effect of lasting character upon the economy of the whole country. The federal financial integration will ensure uniform sources of federal revenue and equal contributions to federal finances which follow from the concept of the sovereignty of the people and equality of the Provinces and the States. It will also effectively patch up the disruptive rents in the economy of India, which rendered effective implementation of the economic policies in the Provinces impossible. Thus, for instance, in the matter of income-tax evasion alone, the gains from federal financial integration will prove very substantial. It is after giving careful consideration to all these aspects of the matter that the Ministry of States have come to the conclusion that privy purse payments should constitute a charge on the revenues of the Indian Union.

The total annual privy purse commitment so far made amounts to Rs. 4,66,73,539; when the amounts guaranteed to certain Rulers during their life-time are no longer payable, the total annual expenditure in respect of privy purses will amount to Rs. 3,89,98,535. It is not intended that the Centre should assume full liability for these payments as soon as the federal financial integration of States becomes effective. It is contemplated that there would be a transitional period not exceeding ten years, during which this liability will be shared between the Centre and the States on an equitable basis. Details of these arrangements are being worked out in consultation with the Ministry of Finance with due regard to the interests of the Centre and the Provinces and States. Apparently, the constitutional arrangements that would best secure the objective in view would be that the Constitution should,

- (a) provide that payments guaranteed under the covenants or agreements of merger shall be a charge on the Consolidated Fund of India;
and
- (b) authorize the President
 - (i) to regulate the manner in which these payments are to be made;
and
 - (ii) to prescribe the sums, if any, which the States may be required

to pay into the Consolidated Fund of India as contribution towards the privy purse payments guaranteed to the Rulers of the merged and integrated States, and the period over which the payment of such contributions might extend.

It will not be inappropriate to mention here that the privy purse payments guaranteed by the Government of India should not be viewed in isolation, but in the context of the momentous developments affecting the most vital interests of the country. These guarantees form part of the historic settlements, which enshrine in them the consummation of the great ideal of geographical, political and economic unification of India, an ideal which for centuries remained a distant dream and which appeared as remote and as difficult of attainment as ever, even after the advent of Indian Independence. It is hardly necessary to recall in this connection the constitutional implications of the lapse of paramountcy and of the provision in the Indian Independence Act releasing the States from all their obligations to the British Crown. There was, no doubt, recognition in the various announcements of the British Government of the fundamental fact that each State should link up its future with that Dominion with which it was geographically contiguous. Since, however, this was a matter left for ultimate decision of the Ruler of each State, this made the position of the Indian Dominion very difficult. Lord Mountbatten in his opening address to the Conference of Rulers held on 25th July, 1947, recognized that with the lapse of paramountcy the States would have complete freedom and that technically and legally they would be independent. He also recognized that the States were theoretically free to link their future with whichever Dominion they might care although in saying so he referred to certain geographical compulsions, which could not be evaded. The situation was indeed fraught with immeasurable potentialities of disruption, for some of the Rulers did wish to exercise their technical right to declare Independence and others to join the neighbouring Dominion. The fact that the Government of India did not recognize any such right of the Rulers did not improve the matters very much. If the Rulers had exercised their right, there is no doubt that they would have found considerable support from influential elements both in India and abroad. Some important States did actually announce their intention of remaining independent. A few Rulers started negotiations with both the Dominions and tried to use the opportunity not for the stability of the country or the State but for their personal advantage. Disruptive tendencies which had been sedulously cultivated and encouraged were assuming menacing proportions and proposals for not only one but for several Rajasthans were in the air. There were not a few who nursed the hope that, overwhelmed by the combined weight of the partition of India and the disruption of the States, the Government of India would go under.

It was against this unpropitious background that the Government of India invited the Rulers of the States to accede on three subjects of Defence,

External Affairs and Communications. At the time the proposal was put forward to the Rulers, an assurance was given to them that they could remain as they were except for accession on three subjects. Not only in the announcement of the Honourable Minister for States, but also in the address of Lord Mountbatten to the Princes, it had been made clear that *accession on three subjects did not imply any financial liability on the part of the States and that there was no intention either to encroach on the internal autonomy or the sovereignty of the States or to fetter their discretion in respect of their acceptance of the new Constitution of India.* It is against these commitments that the States Ministry had to approach the Rulers for the integration of their States. There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have caused serious repercussions. If the Rulers had chosen to keep out of the integration arrangements, they would have continued to draw the heavy civil lists that they used to draw before, and in a large number of cases they could have enjoyed unrestricted use of their State revenues. The minimum that we could offer to them as a *quid pro quo* for parting with their ruling powers, therefore, was to recognize the continuance of the institution of the rulership for the purposes only of civil list and certain personal privileges on a reasonable and defined basis. The privy purse settlements, therefore, and the guarantee that the personal privileges and the rights of the Rulers will continue, are in the nature of consideration for the surrender by the Rulers of all their ruling powers and also for the dissolution of the States as separate units. The capacity for mischief and trouble on the part of the Rulers, if the settlement with them had not been reached on a negotiated basis, was far greater than could be imagined at this stage. The privy purse settlements and the guarantees regarding personal privileges of the Rulers should, therefore, be viewed as the price paid for this bloodless revolution which has affected the destinies of millions of people of this country. The Rulers have now discharged their part of the obligations by transferring all ruling powers and by agreeing to the integration of their States. The only obligation under these agreements that has to be discharged by us is to ensure that the guarantees given by us in respect of privy purses and personal privileges are fully implemented. This could only be possible if we guaranteed these payments under constitutional provisions. Any other alternative would be a breach of faith and seriously prejudice the stabilization of the new order.

Under the terms of the merger agreements all the privy purses of the Rulers are to be free from all taxation. The exemption in respect of taxation applies only to the amounts of privy purses and does not extend to any other income of the Ruler or the income of the members of their families. The right of the Rulers to this exemption had to be accepted because in their own territories the Rulers were recognized as sovereigns and were free from all kinds of taxation. The Ministry of States, therefore, propose

that a provision should also be made in the Constitution that privy purse payments shall be exempt from income-tax.

(vi) *Guarantees given to the Rulers under various covenants and agreements in respect of rights and privileges*: Guarantees have been given to the Rulers under the various agreements and covenants in respect of such matters as their succession to the *gaddi* and continuance of their rights and privileges. In a memorandum issued on the subject we have already made it clear that it was neither desirable nor practicable to draw up an exhaustive list of the privileges enjoyed by the Rulers. Nor do the Ministry of States consider it desirable that any of the provisions of the covenants and agreements of merger should become justiciable; if these agreements were allowed to be justiciable, there would be a perpetual cause for regret. The Ministry have, therefore, already suggested to the Drafting Committee that article 109 should be so worded as to exclude specifically the agreements of merger and the covenants from the jurisdiction of Supreme Court or any other courts. At the same time, the Ministry of States are anxious that constitutional recognition should be given to the obligations which the Government of India have assumed under the various agreements and covenants. The object is to allay the fears of the Rulers and to emphasize the moral obligation of the Government of the Union of India to honour these commitments. This is the only alternative to making these agreements justiciable.

(vii) *Control of the Government of India over the States during the transitional period*: The States and the Unions of States have to make up the leeway of ages to assume the position of full-fledged constituent units of the Union of India. Having regard to the magnitude of the tasks that confront the Governments of the Unions in the transitional period and to the fact that neither the services inherited by them nor the political parties as at present organized are in a position to assume unaided full responsibilities of the administration, a provision has been made in the covenants for the formation of the various Unions to the following effect:

Notwithstanding anything contained in this Covenant, until a constitution framed by the Constituent Assembly comes into operation after receiving the assent of the Rajpramukh, the Rajpramukh and the Council of Ministers chosen by him under Article V of this Covenant, shall in the exercise of their functions under the provisions of this Covenant be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the Government of India.

The Government of India are of the view that in the interest of proper evolution of these Unions, it is necessary that the Central Government should retain their control over the Governments of the Unions for five years even after the Constitution of India becomes operative. It is not the intention of the Government of India that the Legislature of the Union, where one is in existence, should be prevented in any manner from holding the Ministers

responsible to it in the framing of their policies and in the conduct of the administration. At the same time it is inevitable that to the extent that the Union Governments act in pursuance of the directions of the Government of India, they should be acquitted of responsibility to the Union Legislature. It is, therefore, proposed that a provision to that effect may be made in the Constitution.

(viii) *Entries in the legislative lists* : The Ministry of States have also examined the entries in the various legislative lists in so far as they relate to the States. It has been decided to omit such entries as the one relating to the Indian State railways to ensure that the legislative power of the Union is co-extensive with the Unions' legislative authority over the Provinces. There is one such entry, however, which needs consideration. This entry is No. 4 in List I of the Seventh Schedule to Draft Constitution; it reads as follows :

4. The raising, training, maintenance and control of the naval, military and air forces of the Union and their employment ; the strength, organization and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule.

The first part of this entry relates to the whole of the territory of the Indian Union. The second part of it relates only to States in Part III of the First Schedule. The Indian States Forces have so far been governed by the agreements subsisting between the States and the Government of India, which have been continued under the standstill agreements. Under these agreements, the strength and organization of the Indian States Forces were in the past determined by the Crown Representative and are now determined by the Government of India. These standstill agreements will continue to be in force until they are terminated by mutual agreement.

The scheme that governs the Indian States Forces assigns to them a definite role in the overall defence structure of India as well as for maintaining the internal security and provides for the maintenance by them of appropriate standards of efficiency and equipment. The number of States which maintained the armed forces before August 15, 1947, was less than fifty. Since then a large number of these States have merged and the process of integration of the forces of these in the Indian Army is going apace.

Apart from the agreements governing the Indian States Forces a special provision has been made in the covenants establishing the various Unions of States, the provisions of which have been guaranteed by the Government of India, in respect of the forces of these Unions. This provision is to the following effect :

Subject to any directions or instructions that may from time to time be given by the Government of India in this behalf, the authority to raise, maintain and administer the military forces of the United State shall vest exclusively in the Rajpramukh.

After prolonged discussions, to which the Defence Ministry was a party, it has been decided that all forces other than the forces in Madhya Bharat,

Saurashtra, PEPSU (Patiala and East Punjab States Union) and Rajasthan should be absorbed in the Indian Army. The forces of the Unions other than the said four Unions will be absorbed in the Indian Army before the new Constitution becomes operative.

In the case of the forces of these four Unions also, as a result of the recent discussions, it has been decided that not only the strength and organization of the forces will be determined by the Government of India with reference to the overall requirements of the troops for defence and internal security, but that the personnel of the Union forces will take an oath of allegiance to the Central Government and that these forces will be under the operational control of the G.O.C.-in-C. of the Indian Army command in which the Union is located. It has been further decided that in each Union an officer selected by the Government of India will be appointed as the G. O. C. of the armed forces of the Union concerned. Further measures such as interchangeability of officers between the Indian army and the Union have also been decided upon to fit in more closely the Union forces into the defence structure of India and to bring them up to the level of the Indian Army. While these measures are being taken to integrate the States forces as regular units of the Indian Army, it is evident that in the case of Madhya Bharat, Saurashtra, PEPSU and Rajasthan Unions and one or two other States such as Mysore and Hyderabad, there will be, when the new Constitution comes into operation, forces other than those raised by the Indian Union. It is no doubt intended that in course of time the forces of these Unions should also form an integral part of the Indian army, but until that happens, it is necessary to have a provision in the Constitution for regulating these forces. If the latter part of entry 4 in List I is omitted, the Union Parliament will not have any power to regulate these forces inasmuch as they will not be forces of the Indian Union within the meaning of entry 4 as it will stand after the deletion of its latter part. Even under the existing arrangements, although the States have acceded on "naval, military and air forces of the Dominion", the armed forces raised and maintained by an acceding State are not included in naval, military and air forces of the Dominion. The consequence of the omission of the latter part of the entry may, therefore, be that neither the Indian Parliament nor the Legislatures of the Unions or States concerned will have any power to regulate these forces. It is, therefore, essential that the Constitution should recognize the existence of these forces and provide for them.

As already stated, the States Ministry propose to bring about a complete absorption of the States forces in the Indian Army by degrees. Meanwhile, a plan has been evolved under which the Government of India would retain effective control over these forces. If no provision is made in the Constitution about these forces, the Government of India would be accused by the Rajpramukhs of going back on the covenants, the provisions of which have

been guaranteed by the Government of India, and at the same time it would create an awkward position in respect of these forces when the new Constitution comes into operation.

It has been pointed out that the legislative power of the States having been limited by the entries enumerated in List II of the Seventh Schedule, those States would not have power to legislate in respect of any of the matters relating to the armed forces not included in that List. The Ministry of States recognize that it would be inadvisable to insert in List II a provision corresponding to the latter part of entry 4 in List I. Nothing could be farther from the intentions of this Ministry than to permit the States specified in Part III of First Schedule to raise any forces and to employ them as they like. In fact the Ministry would welcome a substantive provision in the Constitution making it clear beyond doubt that the forces of the Indian States would form an integral part of the forces of the Indian Union. At the same time provision should also be made to meet the requirements of these forces until they are absorbed in the Indian Army as regular units. It is, therefore, suggested that a new article may be inserted in the Constitution somewhat to the following effect :

(1) The armed forces raised and employed in any of the States for the time being specified in Part III of the First Schedule shall form part of the forces of the Union of India.

(2) Until the Parliament otherwise provides by law, the raising, training, maintenance and control of the said forces shall be regulated in such manner as the President may, by general or special order, prescribe.

(III) VALLABHBHAI PATEL'S SPEECH IN THE CONSTITUENT ASSEMBLY*

October 12, 1949

Sir, it has been my endeavour to keep the House fully informed of our policy and the developments in respect of the States. Apart from the statements I have made on the floor of the House from time to time, I laid before the House in July last year a White Paper on States in which not only was set out in detail the policy pursued by the Government of India towards the States but also the various agreements and covenants entered into with the Rulers were reproduced. In March last I placed before the House another detailed report on the policy and the working of the Ministry of States. Now that the process of integration of the States has been completed I propose to place before the House next month another State Paper which will contain a comprehensive review of all the developments which have taken place in respect of the Indian States since this Government was called upon to face the problem of States.

The amendments which are now being proposed concerning the provisions of the Constitution applicable to the States, embody the results of the bloodless revolution which within a remarkably short period, has transformed the internal and external set-up of the States. The fact that the new Constitution specifies only nine States in Part III of Schedule I is an index to the phenomenal progress made by the policy of integration pursued by the Government of India. By integrating 500 odd States into sizeable units and by the complete elimination of centuries-old autocracies, the Indian democracy has won a great victory of which the Princes and the people of India alike should be proud. This is an achievement which should redound to the credit of any nation or people at any phase of history.

As the House is aware, when the States entered the Constituent Assembly of India, it was thought that the constitutions of the States would not form part of the Constitution of India. It was also understood that unlike the Provinces the accession of the States to the Indian Union would not be automatic but would be by means of some process of ratification of the Constitution. In the context of those commitments and the conditions then obtaining certain provisions were incorporated in the Draft Constitution, which placed the States in certain important respects on a footing different from that of the Provinces.

As a result of the policy of integration and democratization of States pursued by the Government of India since December 1947 the process of what might be described as unionization of States has been greatly accelerated. Two important developments in this direction have been the extension of the legislative authority of the Dominion over the States and the federal financial integration of the States. The States had originally acceded in respect of the three subjects of Defence, Foreign Affairs and Communications only. With the formation of the Unions the legislative power of the Dominion Parliament was extended in respect of the Unions of States to all matters specified in the Federal and Concurrent Lists except those relating to taxation. The content of the accession of the State of Mysore was also likewise extended.

The gap in the financial field has now been filled by the arrangements which have been negotiated with the States on the basis of the recommendations made by the Indian States Finances Enquiry Committee. The fundamental basis of this scheme is that federal financial integration of the States is a necessary consequence of the basic conception underlying the new Constitution of the Union of India—that of Provinces and States as equal partners. The scheme, therefore, is based upon complete equality between the Provinces and States in the following respects:

(1) The Central Government should perform the same functions and exercise the same powers in States as in Provinces;

- (2) the Central Government should function through its own executive organizations in States as in Provinces ;
- (3) there should be uniformity and equality in the basis of contributions to Central resources from Provinces and States ;
- (4) there should be equality of treatment as between Provinces and States in the matters of common services rendered by the Central Government, and as regards the sharing of divisible federal taxes, grants-in-aid, 'subsidies', and all other forms of financial and technical assistance.

The fact that these far-reaching changes in our fiscal structure are being introduced with the full concurrence of the States is in itself a great tribute to the excellent work done by the Indian States Finances Enquiry Committee under the chairmanship of Sir V. T. Krishnamachari, who brought to bear on this important problem his vast experience in Indian States.

These important developments enabled us to review the position of the States under the new Constitution and to remove from it all vestiges of anomalies and disparities which found their way into the new Constitution as a legacy from the past.

When the covenants establishing the various Unions of States were entered into, it was contemplated that the constitutions of the various Unions would be framed by their respective Constituent Assemblies within the framework of the covenants and the Constitution of India. These provisions were made in the covenants at a time when we were still working under the shadow of the theory that the assumption, by the Constituent Assembly of India, of the constitution-making authority in respect of the States would constitute an infringement of the autonomy of the States. As, however, the States came closer to the Centre, it was realized that the idea of separate constitutions being framed for the different units of the Indian Union was a legacy from the Rulers' polity and that in a people's polity there was no scope for variegated constitutional patterns. We, therefore, discussed this matter with the Premiers of the various Unions and decided, with their concurrence, that the Constitution of the States should also form an integral part of the Constitution of India. The readiness with which the legislatures of the three States in which such bodies are functioning at present, namely, Mysore, Travancore and Cochin Union and Saurashtra, have accepted this procedure, bears testimony to the wish of the people of the States to eschew the separatist trends of the past.

In view of these important developments it became necessary to recast a number of the provisions of the Constitution in so far as they related to the States. The amendments we are proposing have been examined by the Constitution-making bodies of Mysore, Saurashtra and Travancore and Cochin Union. Some of the modifications proposed by these bodies have been incorporated in the amendments tabled before the House. Others have

been dropped as a result of the discussions I have had with the representatives of these Constituent Assemblies.

It is a matter of deep regret for me that it has not been possible for us to adopt a similar procedure for ascertaining the wishes of the people of the other States and Unions of States through their elected representatives. Unfortunately we have no properly constituted Legislatures in the rest of the States ; nor will it be possible to have Legislatures constituted in them before the Constitution of India emerges in its final form. We have, therefore, no option but to make the Constitution operative in these States on the basis of its acceptance by the Ruler or the Rajpramukh, as the case may be, who will no doubt consult his Council of Ministers. I am sure neither the honourable Members representing those States in this House nor the people of the States generally, would wish that the enforcement of the Constitution in these States should be held over until Legislatures or constitution-making bodies are constituted in them. The Legislatures of these States when constituted under the new Constitution, may propose amendments to the Constitution. I wish to assure the people of these States that any recommendations made by their first Legislatures would receive our earnest consideration. In the meantime I have no doubt that the Constitution framed by this House, where all the States except one are duly represented, will be acceptable to them.

In view of the special problems with which the Government of Jammu and Kashmir is faced, we have made a special provision for the continuance of the constitutional relationship of the State with the Union on the existing basis. In the case of Hyderabad State the acceptance of the Constitution will be subject to ratification by the people of the State.

As the House will see, in several respects the Constitution, as it now emerges, is different from the original draft. We have deleted such provisions as articles 224 and 225, which imposed limitations on the Union's legislative and executive authority in relation to States in the federal sphere. The entries in the Legislative List which differentiated between the States and Provinces have likewise been dropped. The legislative and executive authority of the Union in respect of the States will, therefore, be co-extensive with its similar authority in and over the Provinces. Subject to certain adjustments during the transitional period, the fiscal relationship of the States with the Centre will also be the same as that between the Provinces and the Centre. The jurisdiction of the Supreme Court will now extend to the States to the same extent as in the case of the Provinces. The High Courts of the States are to be constituted and will function in the same manner as the Provincial High Courts. All the citizens of India, whether residing in States or Provinces, will enjoy the same fundamental rights and the same legal remedies to enforce them. In the matter of their constitutional relationship with the Centre and in their internal set-up the States will be on a par with the Provinces.

I am sure the House will note with gratification the important fact that unlike the scheme of 1935, our new Constitution is not an alliance between democracies and dynasties, but really a union of the Indian people built on the basic concept of sovereignty of the people. It removes all barriers between the people of the States and the people of Provinces and achieves for the first time the objective of a strong democratic India built on the true foundation of a cooperative enterprise on the part of the people of the Provinces and States alike.

As the House is acquainted with trends of developments affecting the States it is not necessary for me to explain to the House the various amendments which have been tabled. There are two or three matters, however, about which I should like to make a few observations.

One of these is the proposed article 306-B. As the House is aware, the States, as we inherited them, were in varying stages of development. In most cases the advance had to be made from the starting point of pure autocracy. Having regard to the magnitude of the task which confronted the Governments of the Unions in the transitional period, and to the fact that neither the services inherited by them nor the political organizations, as they existed there, were in a position to assume, unaided, full responsibilities of the administration, we made a provision in some of the covenants that till the new Constitution came into operation in these Unions, the Rajpramukh and the Council of Ministers shall, in the exercise of their functions, be under the general control of the Government of India and comply with the instructions issued by that Government from time to time. The stress of the transitional phase is likely to continue for some years. We are ourselves most anxious that the people of these States should shoulder their full responsibilities; however, we cannot ignore the fact that while the administrative organization and political institutions are to be found in most of the States in a relatively less developed State, the problems relating to the integration of the States and the change-over from an autocratic to a democratic order are such as to test the mettle of long established administrations and experienced leaders of people. We have, therefore, found it necessary that in the interest of the growth of democratic institutions in these States, no less than the requirements of administrative efficiency, the Government of India should exercise general supervision over the Governments of the States till such time as it may be necessary.

It is natural that a provision of this nature which treats States in Part III differently from Part I States should cause some misgivings. I wish to assure the honourable Members representing these States and through them the people of these States that the provision involves no censure of any Government. It merely provides for contingencies which, in view of the present conditions, are more likely to arise in Part III States than in the States of other categories. We do not wish to interfere with the day-to-day administration of any of the States. We are ourselves most anxious that

the people of the States should learn by experience. This article is essentially in the nature of a safety-valve to obviate recourse to drastic remedies such as the provisions for the breakdown of the constitutional machinery. It is quite obvious that in this matter the States, *e.g.*, Mysore and the Travancore and Cochin Union where democratic institutions have been functioning for a long time and where Governments responsible to Legislatures are in office, have to be treated differently from the States not conforming to these standards. In all these cases our control will be exercised in varying degrees according to the requirements of each case. The proviso to the article gives us the necessary discretion to deal with each case on its merits.

I hope this statement which embodies our considered policy will allay any apprehension which the Governments of any of these States may have concerning this article.

Another matter about which I would like to remove misgivings is the proposed amendment to article 3. This amendment places the States in Part III on the same footing as the States in Part I in respect to territorial readjustments. The Constituent Assembly of Mysore recommended to us that the article as already adopted by this House, which provides for prior consent of Part III States before any proposals affecting their territories are placed before the House, should remain unaltered. We have not found it possible to agree to the suggestion for the simple reason that in such matters there should be no differentiation between Part I and Part III States. I, however, take this opportunity of assuring the representatives of Mysore State that whether the article provides for consultation or consent of the Legislature of the affected State, the wishes of the people cannot be ignored either by the Central Government or Legislature. After all, we are a democracy; the main sanction behind us is the will of the people and we cannot act in disregard of public opinion.

I now come to the proposed article 267-A in respect of which some explanation is necessary. The Government of India have guaranteed to the Rulers of merged and integrated States payment of privy purses as fixed under the terms of the various covenants and agreements of merger. Article 267-A gives constitutional recognition to these guarantees and provides for this expenditure being charged on the Central Revenues subject to such recoveries as may be made from time to time from the Provinces and States in respect of these payments.

I shall first deal with the financial aspect of these arrangements. In the past, in most of the States there was no distinction between the expenditure on the administration and the Rulers' privy purse. Even where the Rulers' privy purse had been fixed no effective steps were taken to ensure that the expenditure expected to be covered by the privy purse was not directly or indirectly charged on the revenues of the State. Large amounts, therefore, were spent on the Rulers and on the members of the ruling families.

This expenditure has been estimated to exceed twenty crores of rupees per year.

All the agreements of merger and covenants now provide for the fixation of the Rulers' privy purse which is intended to cover all the expenses of the Rulers and their families including the expenses of their residences, marriages and other ceremonies, etc. The privy purse guaranteed under these agreements is less than the percentage for the Deccan States under the award given by Dr. Rajendra Prasad, Shri Shankarrao Deo and Dr. Pattabhi Sitaramayya. It is calculated on the basis of 15 per cent on the first lakh of average annual revenue of the State concerned, ten per cent on the next four lakhs and seven and a half per cent, above five lakhs, subject to a maximum of ten lakhs. The maximum figure of ten lakhs has been exceeded only in the case of some of the major States, which had been recognized as viable and the amounts fixed in such cases are payable during their life-time only. The total annual privy purse commitments so far made amount to about Rs. four and a half crores. When the amounts guaranteed to certain Rulers during their life-time are subsequently refixed the total annual expenditure in respect of privy purses will amount to less than Rs. four crores.

Under the terms of the covenants and the agreements entered into by the Rulers, privy purses are payable to the Rulers out of the revenues of the States concerned and payments have so far been made accordingly. During the course of the discussions with the Indian States Finances Enquiry Committee, it was urged by most of the States that the liability for paying privy purses of Rulers should be taken over by the Centre on the ground that—

- (a) privy purses have been fixed by the Centre;
- (b) privy purses are political in nature; and
- (c) similar payments are not made by the Provinces.

Apart from these considerations, the position has definitely changed since the execution of the covenants. In the first place, so far as the merged States are concerned, with their total extinction under the new Constitution of India as separate entities, the basis of liability for privy purse payments guaranteed to the Rulers of the States will undergo a change, in that the States, from the revenues of which privy purses are payable, would cease to exist. Secondly, the term "revenues of the State" has now to be viewed in the context of the federal financial integration of States. This integration involves a two-fold process; one, of 'functional' partition of the present composite State Governments, and the other of 'merger' of the partitioned 'federal' portions of the State Governments with the present Central Government. It follows, therefore, that when the federal financial integration becomes effective, the liability in respect of privy purse payments should strictly speaking be shared on an equitable basis by the functional successors to the Governments of merged and integrated States, that is, the Central

Government, on the one hand, and the Governments of Provinces and States on the other. Having regard to all these factors, we have decided that the best course would be that these payments should constitute a charge on the Central revenues, but that, at the same time, provision should be made for the recovery of such contributions from the Governments of the States during such transitional period and in such amounts as may be considered appropriate. These recoveries are to be made in accordance with the scheme for financial integration of the State.

I have already stated that the privy purse settlements made by us will reduce the burden of the expenditure on the Rulers to at least one-fourth of the previous figure. Besides, the States have benefited very considerably from the process of integration in the form of cash balances inherited by them from the Rulers. Thus, for instance, the Rajpramukh of Madhya Bharat alone has made over to the Union large sums of money yielding interest sufficient to cover a major portion of the total privy purses of the Rulers who have joined this Union. So far as the assumption of the part of the burden by the Centre is concerned, we must remember that this arrangement flows as a consequence of the financial integration of the States, which will have an effect of lasting character on the economy of this country. The fiscal unification of India will patch up the disruptive rents in the economy of India which rendered effective implementation of economic policies in the Provinces impossible. Thus, for instance, in the matter of income-tax evasion alone, which has been a serious matter in recent years, the gains from federal financial integration will prove very substantial. From the financial point of view, therefore, the arrangements we have made are going to benefit very materially the economy of this country.

I shall now come to the political and moral aspect of these settlements. In order to view the payments guaranteed by us in their correct perspective, we have to remember that they are linked with the momentous developments affecting the most vital interests of this country. These guarantees form part of the historic settlements which enshrine in them the consummation of the great ideal of geographical, political and economic unification of India, an ideal which for centuries remained a distant dream and which appeared as remote and as difficult of attainment as ever even after the advent of Indian independence.

Human memory is proverbially short. Meeting in October, 1949, we are apt to forget the magnitude of the problem which confronted us in August, 1947. As the honourable Members are aware, the so-called lapse of paramountcy was a part of the Plan announced on June 3, 1947, which was accepted by the Congress. We agreed to this arrangement in the same manner as we agreed to the partition of India. We accepted it because we had no option to act otherwise. While there was recognition in the various announcements of the British Government of the fundamental fact that each State should link up its future with that Dominion with which it was

geographically contiguous, the Indian Independence Act released the States from all their obligations to the British Crown. In their various authoritative pronouncements, the British spokesmen recognized that with the lapse of paramountcy, technically and legally the States would become independent. They even conceded that theoretically the States were free to link their future with whichever Dominion they liked although, in saying so, they referred to certain geographical compulsions which could not be evaded. The situation was indeed fraught with immeasurable potentialities of disruption, for some of the Rulers did wish to exercise their technical right to declare independence and others to join the neighbouring Dominion. If the Rulers had exercised their right in such an unpatriotic manner, they would have found considerable support from influential elements hostile to the interests of this country.

It was against this unpropitious background that the Government of India invited the Rulers of the States to accede on three subjects of Defence, External Affairs and Communications. At the time the proposal was put forward to the Rulers, an assurance was given to them that they would retain the *status quo* except for accession on these subjects. It had been made clear to them that this accession did not also imply any financial liability on the part of the States and that there was no intention either to encroach on the internal autonomy or the sovereignty of the States or to fetter their discretion in respect of their acceptance of the new Constitution of India. These commitments had to be borne in mind when the States Ministry approached the Rulers for the integration of their States. There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have not only been against our professed principles but would have also caused serious repercussions. If the Rulers had elected to stay out, they would have continued to draw the heavy civil lists which they were drawing before and in a large number of cases they could have continued to enjoy unrestricted use of the State revenues. The minimum which we could offer to them as *quid pro quo* for parting with their ruling powers was to guarantee to them privy purses and certain privileges on a reasonable and defined basis. The privy purse settlements are, therefore, in the nature of consideration for the surrender by the Rulers of all their ruling powers and also for the dissolution of the States as separate units. We would do well to remember that the British Government spent enormous amounts in respect of the Mahratta settlements alone. We are ourselves honouring the commitments of the British Government in respect of the pensions of those Rulers who helped them in consolidating their Empire. Need we cavil then at the small—I purposely use the word small—price we have paid for the bloodless revolution which has affected the destinies of millions of our people.

The capacity for mischief and trouble on the part of the Rulers if the

settlement with them had not been reached on a negotiated basis was far greater than could be imagined at this stage. Let us do justice to them; let us place ourselves in their position and then assess the value of their sacrifice. The Rulers have now discharged their part of the obligations by transferring all ruling powers and by agreeing to the integration of their States. The main part of our obligation under these agreements is to ensure that the guarantees given by us in respect of privy purses are fully implemented. Our failure to do so would be a breach of faith and seriously prejudice the stabilization of the new order.

In commending the various provisions concerning the States to the House I would ask the honourable Members to view them as a co-ordinated overall settlement of a gigantic problem. A particular provision isolated from its context may give a wholly erroneous impression. Some of us might find fault with what might appear as relics of the previous autocratic set-up. I wish to assure honourable Members that autocracy in the States has gone, and has gone for good. Let us not get impatient with any particular term which might remind us of the past. The form in which the Rulers find recognition in the new Constitution of India, in no way impairs the democratic set-up of the States. The Rulers have made an honourable exit; it now remains for the people to fill the breach and to derive full benefit from the new order.

I take the liberty to remind the House that at the Haripura Session the Congress in 1938 defined its objective in respect of the States as follows:

The Congress stands for the same political, social and economic freedom in the States as in the rest of India and considers the States as integral parts of India which cannot be separated. The Purna Swaraj or complete Independence, which is the objective of the Congress, is for the whole of India, inclusive of the States, for the integrity and unity of India must be maintained in freedom as it has been maintained in subjection. The only kind of federation that can be acceptable to the Congress is one in which the States participate as free units, enjoying the same measure of democratic freedom as the rest of India.

I am sure the House will agree with me when I say that the provisions which we are now placing before the House embody in them full achievement of that objective (*Cheers*).

PART NINE
SERVICES

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PROVISIONS REGARDING SERVICES

June-July 1949

[Commenting on the Draft Constitution as settled by the Drafting Committee in February, 1948, the Ministry of Home Affairs suggested inter alia that provision should be included in the Constitution to cover three matters relating to the tenure of all civil servants: first, that it should be made explicit that every civil servant held office during the pleasure of the President or the Governor, as the case might be: second, that the power to remove or dismiss a civil servant could not be delegated to an authority lower in rank than the authority competent to appoint him: and third, that the authority competent to dismiss or remove a civil servant or reduce him in rank would be required to give him an opportunity to show cause against such action. Revised provisions were formulated by the Ministry which sought to give effect to these suggestions: and were also accepted by the Drafting Committee.

At a subsequent stage, the Drafting Committee framed two fresh articles on this subject. The main change introduced at this stage was that the clause laying down that a civil servant would hold office during the pleasure of the President or the Governor, as the case might be, was expanded so as to provide that every person who was a member of a defence service would also hold office during the President's pleasure. At the instance of the Ministry of Home Affairs, these provisions were considered by the Ministry of Defence, which was also consulted on the question whether the safeguards laying down the procedure to be followed in regard to dismissal, removal and reduction in rank should be made applicable to the defence services.

The Ministry of Defence accepted the provisions as drafted, but was strongly of the view that the defence services should not be brought within the scope of the provisions relating to dismissal, removal and reduction in rank as they applied to the civil services. This view was accepted by the Drafting Committee.

The amendments proposed by the Drafting Committee and the letters from the Ministries of Home Affairs and Defence are reproduced below.]

(I) NEW ARTICLES 282-A AND 282-AA PROPOSED BY THE
DRAFTING COMMITTEE

THAT IN AMENDMENT No. 3034*, for the new article 282-A the following articles be substituted :

282-A. *Tenure of office of persons serving the Union or a State* : Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an All-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State holds office during the pleasure of the Governor of the State.

282-AA. *Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State* : (1) No person who is a member of a civil service of the Union or an All-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this clause shall not apply—

(a) where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

(3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to the last preceding clause, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

(II) EXTRACT FROM D. O. LETTER NO. 20/11/48-GS FROM THE
JOINT SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY
OF HOME AFFAIRS, TO THE JOINT SECRETARY,
CONSTITUENT ASSEMBLY
June 13, 1949

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2. The new articles 282-A and 282-AA, proposed by the Honourable

*Notice of Amendments Vol. II (not reproduced).

Dr. B. R. Ambedkar, in substitution of the draft article 282-A, meet our requirements and are acceptable to us. Clause (3) of the new draft article 282-AA is also unexceptionable, so far as we are concerned.

3. We also see no objection, so far as we are concerned, to the change made in the new draft article 282-A so as to make it applicable to the Defence Services also. The matter is, however, primarily for the Ministry of Defence to whose notice it has been brought for such action as they may consider necessary. That Ministry have also been asked to examine the question whether the new article 282-AA should also be made applicable to Defence Services.

(III) EXTRACT FROM D. O. LETTER NO. 138 J. S. (C)/49, FROM THE
JOINT SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF
DEFENCE, TO THE JOINT SECRETARY, CONSTITUENT ASSEMBLY
July 6/7, 1949

* * *

3. We have examined whether any reference should be made to members of the Defence Services in either of these articles (new articles 282-A and 282-AA proposed above). We agree with the Drafting Committee that all provisions with regard to recruitment and conditions of service should be left to be regulated separately by Acts of the Legislature. The Naval Discipline Act, the Indian Army Act and the Indian Air Force Act are under revision and they will make the required provisions. We consider that the Defence Services cannot and should not be brought within the scope of article 282-AA, the main provision of which is that no one should be dismissed or removed from service by an authority subordinate to the officer by whom he has been appointed. For disciplinary reasons it is essential in the Armed Forces to delegate powers to subordinate authorities to dismiss individuals even though they may have been appointed by higher authorities. For example, the junior commissioned officers at present hold commissions from the Governor-General and will presumably hold commissions from the President under the new Constitution; but under the Army Act, they can be dismissed by subordinate officers for specified offences. Unlike the Civil Services, the Armed Forces have a complete disciplinary code which safeguards their rights and privileges consistent with military discipline and it would, we feel, be inadvisable to make provision on any of these matters in the Constitution Act itself. While in the case of the Civil Services it is of the utmost importance to provide for a safeguard for Government servants against wrongful dismissal etc., in the military forces the paramount need is to ensure military discipline. The draft of article 282-AA proposed by the Hon'ble Dr. Ambedkar, therefore, correctly covers only the Civil Services.

We are somewhat doubtful whether it is necessary to include any reference to the Defence Services even in article 282-A though there is no doubt that, like the Civil Services, the Defence Services also will hold office during the pleasure of the President. Presumably this would not stand in the way of any legislation providing for termination of service by a subordinate authority without the formal approval of the President. If so, we have no objection to the draft as it is; but, if there is any doubt on this point, we feel that the reference to the Defence Services might be omitted. It might also be considered whether it would look appropriate to refer to the Defence Services in article 282-A when they are specifically excluded from the next article, i.e. article 282-AA. The reason for this apparent disparity may not be clear.

PART TEN
PUBLIC SERVICE COMMISSIONS



PROVISIONS REGARDING PUBLIC SERVICE
COMMISSIONS

July 27, 1949

[The Draft Constitution as settled by the Drafting Committee did not contain any provision regarding the removal and suspension of a member of a Public Service Commission. The Chairmen of Provincial Public Service Commissions and the Chairman and members of the Federal Public Service Commission in a conference held in May, 1948 recommended that provision should be made in the Constitution that the procedure prescribed for the removal from office of Judges of the Supreme Court and High Courts and of the Comptroller and Auditor General should be followed also in the case of members of the Public Service Commissions. Such removal could only be made by an order of the President passed after an address presented to him by each House of Parliament and supported by a majority of the total membership of the House and not less than two-thirds of the members present and voting. The Drafting Committee accepted the recommendation. But there were still differences of opinion between the Home Ministry and the Drafting Committee on this issue and also on the question relating to the appointments to be made by the executive without reference to the Public Service Commission. In a note dated July 27, 1949 Ambedkar clarified the issues involved. Ambedkar's note is reproduced below.]

NOTE ON PUBLIC SERVICE COMMISSIONS BY B. R. AMBEDKAR
July 27, 1949

WITH REGARD to the provisions relating to the Public Service Commission the difference between myself and my colleague the Hon'ble the Home Minister centres round two questions. The first relates to the power to remove members of the Public Service Commission and the second to the appointments to be made by the Executive without reference to the Public Service Commission.

I find that the Home Ministry is now prepared that the power of making appointments without reference to the Public Service Commission should be subject to the proviso that the regulations made in this behalf shall be

laid before the appropriate Legislature for a stated period of time (say 14 days) and shall be subject to such amendment as may be made therein by resolution passed by that Legislature.

I am prepared to accept this new proposal. I would however prefer that this matter be left for Parliament to provide by law and not to be dealt with by the Constitution.

On the first point, there are two proposals. The proposal of the Home Department is that it should be open to the President or the Governor (which means the Executive) to remove a member of the Public Service Commission on six months' notice without being required to show cause. My proposal is that a member of the Public Service Commission should be liable to be removed from office in like manner and on like grounds as a judge of a High Court or of the Supreme Court. To avoid these two extreme positions I am prepared to have the following formula as a *via media*, namely :

- (i) That a member of a Public Service Commission may be removed from his office by the President or by the Governor by warrant under his Sign Manual on the ground of misbehaviour on a report made to that effect by the Supreme Court.
- (ii) That the President or the Governor may suspend any member of a commission from office for misbehaviour. But a statement of the cause of suspension shall be laid before the appropriate Legislature within seven days after the suspension if it is then sitting, or, if it is not then sitting, within seven days after the next meeting of the Legislature, and if within sixty days thereafter an address is presented by the appropriate Legislature praying for the restoration of the member to office, the member shall be restored accordingly, but if no such address is presented, the President or the Governor, as the case may be, may declare the office of the member to be vacant and the office shall thereupon become vacant.
- (iii) That a member of the Commission shall be deemed to have vacated his office if—
 - (a) he engages, during his term of office, in any paid employment outside the duties of his office ;
 - (b) he becomes bankrupt or insolvent, or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit ;
 - (c) except on leave granted by the President or the Governor, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months ;
 - (d) he becomes permanently incapable of performing his duties.
- (iv) That if a member of the Commission becomes in any way concerned or interested in any contract or agreement made by or

on behalf of the Government or in any way participates in the profit thereof, or in any benefit or emolument arising therefrom, otherwise than as a member of an incorporated company consisting of more than twenty-five persons, he shall be guilty of an indictable offence and shall be liable to such punishment as may be prescribed by law made by the appropriate Legislature.

The above provisions are taken from the Government of India Act, 1935, relating to the removal of judges of the High Court and from the Australian Act relating to the Public Service Commission. They seem to me to offer a fair compromise.

PART ELEVEN
MINORITIES

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SAFEGUARDS FOR MINORITIES

November 1948—May 1949

[When the Constituent Assembly considered in August 1947 the general question of political safeguards for minorities, the effect of the Radcliffe Award on the population structure of East Punjab and West Bengal was not accurately known; further, a tragic and immense migration of populations was taking place across the frontiers of these Provinces. The Assembly accordingly decided to postpone consideration of the whole question of minority rights in the political field to be provided in the Constitution for Sikhs and other minorities in the East Punjab. It was also agreed, at the suggestion of the representatives of West Bengal, to postpone consideration of the question as to whether minorities in that Province should have the right to contest general seats in addition to having seats reserved for them according to population strength.]

The Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas, at its meeting held on February 24, 1948, appointed a special sub-committee to report on the minority problems affecting East Punjab and West Bengal. The sub-committee submitted its report on November 23, 1948.

This report was subjected to some criticism by Gyani Kartar Singh and a memorandum embodying the principal demands of the Sikh community was also submitted by the Sikh members of the East Punjab Legislative Assembly.

The report of the special sub-committee was considered by the Advisory Committee on December 30, 1948. At this meeting the issues of safeguards for the Sikhs and for minorities in West Bengal were again postponed.

A further suggestion was made at this meeting that there should be no reservation of seats in the Legislatures for minorities. The committee adjourned without arriving at any decision. It met again on May 11, 1949 and submitted its proposals to the President of the Constituent Assembly on the same day. The committee recommended that reservations for minorities should be abolished except for the Scheduled Castes and Scheduled Tribes. It was recognized that the peculiar position of Scheduled Castes would make it necessary to give them reservation for a period of ten years.

The report was discussed by the Constituent Assembly for two days, May 25 and 26, 1949. The recommendations as adopted by the Assembly were finally included in the Draft Constitution.

Reproduced below are : (i) extract from the minutes of the Advisory Committee, February 24, 1948; (ii) report of the special sub-committee; (iii) memorandum submitted by the Sikh members of the East Punjab Assembly; (iv) letter from Gyani Kartar Singh to Sardar Patel; (v) minutes of the meeting of the Advisory Committee, December 30, 1948; (vi) minutes of the meeting of the Sikh members of the East Punjab Assembly and of the Constituent Assembly, May 10, 1949; (vii) Report of the Advisory Committee on Fundamental Rights, Minorities etc., May 11, 1949; and (viii) Patel's speech moving the Report, May 25, 1949.]

(I) EXTRACT FROM THE MINUTES OF THE ADVISORY COMMITTEE
MEETING ON FUNDAMENTAL RIGHTS, MINORITIES ETC.
February 24, 1948

* * *

14. THE COMMITTEE then considered items 3 and 4 on the agenda, viz., the whole question of the position of the Sikhs, the rights of the minorities in the East Punjab and the reservation of seats for minorities in West Bengal. The Hon'ble Dr. B. R. Ambedkar thought that in order to come to a peaceful and expeditious decision it would be better to appoint a small committee where the whole matter might be thrashed out. He proposed that the committee should consist of :

The Hon'ble Sardar Vallabhbhai Patel as its Chairman ; the Hon'ble Pt. Jawaharlal Nehru ; the Hon'ble Dr. Rajendra Prasad ; Shri K. M. Munshi ; and the Hon'ble Dr. B. R. Ambedkar.

This suggestion was agreed to.

15. It was also agreed that the report of this special committee should come up before the Advisory Committee for their consideration.

(II) REPORT OF THE SPECIAL SUB-COMMITTEE ON MINORITY
PROBLEMS AFFECTING EAST PUNJAB
AND WEST BENGAL
November 23, 1948

At a meeting held on the 24th February 1948 the Advisory Committee on Minorities, Fundamental Rights etc., appointed a sub-committee consisting of Sardar Vallabhbhai Patel as Chairman, and Pandit Jawaharlal Nehru, Dr. Rajendra Prasad, Dr. Ambedkar and Mr. Munshi as members, to report on certain minority problems affecting East Punjab and West Bengal. We met on the 23rd November and herewith present our report. We much regret that on account of his illness Dr. Rajendra Prasad was unable to be

present during our deliberations and to give us the benefit of his counsel, but we understand from him that he is in complete accord with the conclusions which we have reached.

2. The Advisory Committee will recall that at a session held in August 1947 the Constituent Assembly considered the problem of what may broadly be described as political safeguards for minorities and came to the following conclusions :

- (i) that all elections to the Central and Provincial Legislatures will be held on the basis of joint electorates with reservation of seats for certain specified minorities on their population ratio. This reservation shall be for a period of ten years at the end of which the position is to be reconsidered. There shall be no weightage. But members of the minority communities for whom seats are reserved shall have the right to contest general seats ;
- (ii) that there shall be no statutory reservation of seats for the minorities in Cabinets, but a convention on the lines of paragraph VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935, shall be provided in a Schedule to the Constitution ;
- (iii) that in the All-India and Provincial Services the claims of minorities shall be kept in view in making appointments to these services consistently with consideration of efficiency of administration ; and
- (iv) that to ensure protection of minority rights an officer shall be appointed by the President at the Centre and the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards.

These decisions were reached at a time when the effect of the Radcliffe Award on the population structure of the East Punjab and the West Bengal Provinces was not accurately known and a tragic and immense migration of populations was taking place across the frontiers of the East and West Punjab. The Assembly accordingly decided to postpone consideration of the whole question of minority rights in the political field to be provided in the Constitution for Sikhs and other minorities in the East Punjab. They also agreed, at the suggestion of the representatives of West Bengal, to postpone consideration of the question as to whether minorities in that Province should have the right to contest general seats in addition to having seats reserved for them according to population strength.

3. The most important problem referred to us is the problem of the Sikhs. We have examined carefully the demands put forward on their behalf by different organizations and individuals; these vary from suggestions that no special constitutional safeguards are necessary to the very forthright demands of the Shiromani Akali Dal. In the main these demands are :

- (i) that the Sikhs should have the right to elect representatives to the Legislature through a purely communal electorate ;

- (ii) that in the Provincial Legislature of East Punjab 50 per cent of the seats and in the Central Legislature 5 per cent should be reserved for the Sikhs ;
- (iii) that seats should be reserved for them in the United Provinces and Delhi ;
- (iv) that Scheduled Caste Sikhs should have the same privileges as other Scheduled Castes ; and
- (v) that there should be a statutory reservation of a certain proportion of places in the Army.

It will be noticed that these suggestions are a fundamental departure from the decisions taken by the Assembly in respect of every other community including the Scheduled Castes.

4. It seems scarcely necessary for us to say that in dealing with this problem we are acutely aware of the tragic sufferings which the Sikh community suffered both before and after the partition of the Punjab. The holocaust in West Punjab has deprived them of many valuable lives and great material wealth; moreover, while in these respects the Hindus suffered equally with the Sikhs, the special tragedy of the Sikhs was that they had also to abandon many places particularly sacred to their religion. But while we fully understand the emotional and physical strain to which they have been subjected, we are clear in our minds that the question remitted to us for consideration must be settled on different grounds.

5. The Sikhs are a minority from the point of view of numbers, but they do not suffer from any of the other handicaps which affect the other communities dealt with by the Advisory Committee. They are a highly educated and virile community with great gifts not merely as soldiers but as farmers and artisans, and with a most remarkable spirit of enterprise. There is, in fact, no field of activity in which they need fear comparison with any other community in the country, and we have every confidence that, with the talents they possess, they will soon reach a level of prosperity which will be the envy of other communities. Moreover, while in the undivided Punjab, they were only 14 per cent. of the population, they form nearly 30 per cent. of the population in East Punjab, a strength which gives them, in the public life of the Province, a position of considerable authority.

6. We have come to the conclusion that we cannot recommend either communal electorates or weightage in the Legislature which are the main demands of the Shiromani Akali Dal. In the first place they are not necessary for the well-being of the Sikhs themselves for the reasons we have stated above. Indeed it seems to us that under a system of joint electorates with reserved seats and with the right to contest additional seats the Sikhs are likely to get greater representation than is strictly warranted on the population basis whereas on a system of communal electorates, their representation will be limited. The only way in which this representation could be increased beyond the population basis is to give weightage which means

trenching compulsorily on what other communities legitimately regard as their right. In the second place, communal electorates and weightage are definitely retrograde from the point of view of the general interests of the country. The demands of the Dal are, in principle, precisely those which the Muslim League demanded for the Muslims and which led to the tragic consequences with which the country is all too familiar. We feel convinced that if we are to build a strong State which will hold together in times of peace and war, of prosperity and adversity, the Constitution should contain no provision which would have the effect of isolating any section of the people from the main stream of public life. In this connection we would recall the following resolution passed by the Constituent Assembly at its meeting held on the 3rd April, 1948 :

Whereas it is essential for the proper functioning of democracy and the growth of national unity and solidarity that communalism should be eliminated from Indian life, this Assembly is of opinion that no communal organization which by its constitution or by the exercise of discretionary power vested in any of its officers or organs, admits to or excludes from its membership persons on grounds of religion, race and caste, or any of them, should be permitted to engage in any activities other than those essential for the *bona fide* religious, cultural, social and educational needs of the community, and that all steps, legislative and administrative, necessary to prevent such activities should be taken.

It is not always easy to define communalism, but there could be little doubt that separate electorates are both a cause and an aggravated manifestation of this spirit. The demands of the Dal are thus wholly at variance with the considered judgment of the Assembly.

If the Constitution guaranteed special safeguards such as communal electorates and weightage to the Sikhs, we fear that it would be impossible to justify denying the same privileges to certain other communities. The detailed arguments may vary but the main approach will be similar. We would mention in this connection only the Scheduled Castes whose standards of education and material well-being are, even on Indian standards, extremely low and who, moreover, suffer from grievous social disabilities. They have contented themselves with the provisions approved by the Assembly and referred to in paragraph 2 above. We cannot conceive of any valid argument which would justify the inclusion in the Constitution of safeguards for the Sikhs which are not available to the Scheduled Castes. The case of the Scheduled Castes is merely illustrative. We feel convinced that to accede to the demands of the Shiromani Akali Dal will lead, by an inevitable extension of similar privileges to other communities, to a disrupting of the whole conception of the secular State which is to be the basis of our new Constitution.

7. We recommend accordingly that no special provision should be provided for the Sikhs other than the general provisions already approved by the Assembly for certain other minorities and summarized in paragraph 2.

8. The only reason why the Assembly postponed consideration of the question of giving to minorities in West Bengal the right to contest unreserved seats was that it was pointed out by the West Bengal representatives that the population structure of that Province was not known at that time. Although, on account of the recent exodus from East Bengal, any accurate estimate of the numbers of different communities in West Bengal is a matter of some conjecture, the broad picture is known clearly enough and we do not think there are any reasons why the arrangements already approved by the Assembly for other Provinces should not be applied to West Bengal.

VALLABHBHAI PATEL.

(III) MEMORANDUM SUBMITTED BY THE SIKH MEMBERS OF THE EAST PUNJAB ASSEMBLY

We, the Sikh Members of the East Punjab Assembly, beg to refer to the report of the sub-committee of the Advisory Committee on minority problems and to say that in so far as this relates to the problems of the Sikh community, the following points should be conceded in addition to the recommendations made in the said report :

1. The Sikh Backward Classes, namely, Mazhabis, Kabirpanthis, Ramdasias, Baurias, Sareras and Sikligars, should be placed at par with the Scheduled Castes in the matter of their political rights. This can be done by—

- (a) including these classes in the Scheduled Castes enumerated in the Draft Constitution ; or
- (b) abolishing the reservation of seats for all minorities including the Scheduled Castes in East Punjab ; or
- (c) reserving seats for the said Sikh Backward Classes out of the quota of seats reserved for Sikhs.

The estimated population strength of these classes among the Sikhs is roughly ten per cent : these classes would get ten per cent of the quota of Sikh seats.

2. In the matter of language, script and culture, either zonal arrangements should be provided in the Constitution, or settled immediately by executive action.

3. Sikh minorities outside East Punjab should receive similar treatment as has been or might be granted to other minorities in the matter of political rights.

We would respectfully suggest that for the elucidation of our case we should be given a hearing before the final decision is taken. We may add that we have no other communal safeguards to ask for so far as provision in the Constitution is concerned and that satisfaction along the lines suggested will go a long way to win over the Sikh masses for the national cause.

(IV) LETTER FROM GYANI KARTAR SINGH, MINISTER OF
DEVELOPMENT, GOVERNMENT OF EAST PUNJAB TO
VALLABHBHAI PATEL
December 17, 1948

I have received a copy of the Report of the Sub-Committee on the Minorities issued under your signature as a result of its meeting held on 23rd November at Delhi. Having read it carefully, I do feel that an overwhelming majority of the Sikh community will feel unhappy over it.

2. I had been hoping till the moment I received the copy of the report that this sub-committee would give a hearing and an opportunity for personal discussion to at least the Sikh members of the Advisory Committee. Every one of us has been shocked to know that such an important matter has been reported on without giving an opportunity of personal discussion to the representatives of those who are going to be most affected by the results of the report. I would not perhaps be wrong in saying that the pressmen knew the contents of this report many days before any of the Sikh representatives did. In fact, none of the Sikh representatives knew anything about it till the report reached their hands.

3. As to the substance of the report, the conclusions arrived at therein are based on a discussion of the demands of the Akali Dal alone. The most moderate suggestions put forth by the Sikh legislators for the solution of the Sikh problem perhaps have not been touched at all.

4. The recommendation made by the sub-committee is that no special provision other than the general provision already approved by the Constituent Assembly and summarized in paragraph 2 of the report should be provided for the Sikhs. In the case of Anglo-Indians, however, special safeguards have been devised and incorporated in the Draft Constitution. Why is an odd provision made in favour of the Sikhs considered more harmful than the provisions in favour of the Anglo-Indians? Again, when provisions have been made for the backward section (Scheduled Castes) of the majority community, why is it considered impossible to do the same for the backward section of the Sikhs either by including them among the Scheduled Castes or making reservation for them out of the Sikh seats in the Legislature?

5. In paragraph 2, sub-clause (ii), a convention has been suggested regarding the claims of the minorities for inclusion in the Provincial Cabinets. Nothing has, however, been said therein regarding the Central Cabinet. A definite convention was established with your approval regarding the make-up of the Cabinet in the East Punjab. Now that there is no mention of that convention in this report, there is the danger of an impression gaining ground that that convention has been dropped.

6. On the appointment of this sub-committee the whole question of Sikh rights throughout India was entrusted to it. But it appears from the report

that it is confined to the East Punjab only. It is not clear whether the principle of reservation of seats on population basis will apply to the Sikhs in the East Punjab only or that the benefit of this general rule will accrue to them in other provincial Legislatures and the Central Legislature?

If these points are clarified, we can have a better picture of the position of the Sikhs before us and decide for ourselves how we should further approach the problem.

7. It appears that no attention has been paid by the sub-committee to the necessity of dispelling minority fears from manipulation in the matter of the delimitation of constituencies and the method of reservation of seats for the minority. Much mischief can be done in the Delimitation Committee by gerrymandering with constituencies in East Punjab where large areas which have balanced majority and minority population are particularly liable to it. The method of reservation of seats can make the right of contesting unreserved seats altogether illusory. The report could have contained instructions that sympathy or even generosity should be shown to the minority in these matters.

8. One of the objectives aimed at in the Draft Constitution is to provide full opportunity for the cultural freedom and growth of each and every minority and linguistic area. In the case of the East Punjab and the Sikhs this objective can be effectively achieved by making regional arrangements in the matter of education, culture, language, etc. on the basis of Punjabi-speaking areas and Hindi-speaking areas within the Province. This proposal has the additional merit of killing the demand for a linguistic province. It appears that this scheme has not received the proper attention of the sub-committee. The Sikh representatives have not had an opportunity of explaining its details also. The arrangements visualized in this scheme could also have proved effective in helping the East Punjab to gain more territory which is also essential for its population's well being.

9. There was a suggestion by the Sikh legislators of the East Punjab that Gurgaon district be separated from the East Punjab. The politically conscious section of the people of this district also want it. This district is a part of the Mewat tract and has no real connection with the East Punjab. It lacks any direct means of communication with this Province. The conceding of this demand would have been a gesture of goodwill to a community of sixty lakhs whose terrible sufferings have been recognized in the report. Opposition to the separation of this district from East Punjab is based only on communalism.

Concession on this point will put the Sikhs in a proper frame of mind and prepare them psychologically to feel contented and secure, with only those safeguards which have been provided for the other minorities. They may soon begin to regard the separate existence of Patiala and East Punjab States Union unnecessary to their security.

10. I would, therefore, request you and through you other members of

the sub-committee to apply your mind once more to the Sikh problem and while rejecting separate electorates and weightage for the Sikhs, go all out to satisfy them otherwise.

(V) MINUTES OF THE MEETING OF THE ADVISORY COMMITTEE ON
FUNDAMENTAL RIGHTS, MINORITIES ETC.

December 30, 1948

Present : (1) Hon'ble Sardar Vallabhbhai Patel, (*Chairman*); (2) Hon'ble Shri Jairamdas Daulatram; (3) Shri Surendra Mohan Ghose; (4) Hon'ble Dr. Syama Prasad Mookerjee; (5) Hon'ble Shri Prithvi Singh Azad; (6) Shri Dharam Prakash; (7) Shri H. J. Khandekar; (8) Hon'ble Shri Jagjivan Ram; (9) Hon'ble Dr. B. R. Ambedkar; (10) Shri P. R. Thakur; (11) Shri V. I. Muniswami Pillai; (12) Sardar Jogendra Singh; (13) Hon'ble Sardar Baldev Singh; (14) Hon'ble Sardar Pratap Singh; (15) Sardar Ujjal Singh; (16) Hon'ble Gyani Kartar Singh; (17) Dr. H. C. Mookherjee; (18) Shri P. K. Salve; (19) Shri Frank Reginald Anthony; (20) Shri R. K. Sidhva; (21) Shri Phool Bhan Shah; (22) Shri Devendra Nath Samanta; (23) Shri Jaipal Singh; (24) Hon'ble Maulana Abul Kalam Azad; (25) Shrimati Hansa Mehta; (26) Hon'ble Pandit Govind Ballabh Pant; (27) Hon'ble Shri Gopinath Bardoloi; (28) Hon'ble Shri Purushottamdas Tandon; (29) Prof. K. T. Shah; (30) Shri K. M. Munshi; (31) Shri Amritlal V. Thakkar; (32) Shri M. Ruthnaswamy; (33) Shri Raj Krushna Bose; (34) Shri Saiyid Jafar Imam; (35) Dr. Mohan Singh Mehta; (36) Shri Gokulbhai Bhatt; (37) Seth Govind Das; (38) Shri Lakshmi Kanta Maitra; (39) Shri Thakurdas Bhargava; (40) Shri Sarangdhar Das; (41) Shri Tajamul Hussain; (42) Gyani Gurmukh Singh Musafir; (43) Begum Aizaz Rasul.

The Hon'ble Shri Jawaharlal Nehru also attended the meeting by special invitation.

In attendance : (1) Shri H. V. R. Iengar, Secretary; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary; (4) Shri K. V. Padmanabhan, Under Secretary.

Sir B. N. Rau, Constitutional Adviser, was also present.

In inviting the attention of the committee to the report presented by the special sub-committee on the question of minority rights in the East Punjab and West Bengal, the Chairman asked the members to begin general discussion on the Punjab question first.

2. On a proposal by the Hon'ble Sardar Baldev Singh the committee postponed consideration of the matter to a later date.

3. At the suggestion of Shri Lakshmi Kanta Maitra the committee also agreed to postpone consideration of the question of West Bengal.

4. The Hon'ble Shri Gopinath Bardoloi wanted the committee to reconsider the question of Assam also as, according to him, no community in Assam had an absolute majority over others and the right of "minorities"

to contest general seats did not apply in the circumstances of the case. The Chairman asked the representatives from Assam to send in their suggestions in writing in a concrete form to enable the members to consider them further.

5. Alluding to the motions given notice of by several members seeking to do away with reservation for minorities, the Chairman suggested that the movers should confine their proposals to their own communities, as in the absence of a general agreement it would not be proper to force a minority to give up its right of separate representation. For example, if the Muslims by general agreement among themselves felt that they did not want any reservation, their view should be accepted; but the proposal should come from them and not from a member of any other community.

6. The Hon'ble Dr. B. R. Ambedkar raised a point of order to the effect that the political safeguards for the minorities having been accepted by the Constituent Assembly of India they were not within the reach of the Advisory Committee and that if it was the desire of the committee to discuss the matter *de novo* the proper procedure was to move amendments to the provisions contained in the Draft Constitution. The Chairman ruled that there was no bar to a discussion and that the committee also could recommend reconsideration of the whole matter. On merits, however, he thought that unless there was general agreement the conclusions already arrived at should not be disturbed.

7. A general discussion about the position of the minorities then ensued, but as the consideration of the whole matter was to be postponed the Chairman adjourned the meeting to a later date to be fixed by him.

(VI) MINUTES OF THE MEETING OF THE SIKH MEMBERS OF THE
EAST PUNJAB LEGISLATIVE ASSEMBLY AND OF THE
CONSTITUENT ASSEMBLY
May 10, 1949

The following members attended : (1) Sardar Kapoor Singh; (2) Gyani Kartar Singh ; (3) Sardar Swaran Singh; (4) Sardar Ishar Singh Majhail; (5) Sardar Ujjal Singh; (6) Sardar Joginder Singh Mann; (7) Bhai Piara Singh; (8) Sardar Inder Singh; (9) Sardar Gurbachan Singh Bajwa; (10) Sardar Dalip Singh Kang; (11) Sardar Ajit Singh; (12) Sardar Shiv Saran Singh; (13) Sardar Narottam Singh; (14) Sant Narinder Singh; (15) Sardar Hukam Singh; (16) Sardar Tara Singh; (17) Sardar Rattan Singh Moga; (18) Sardar Rattan Singh Logarh; (19) Sardar Gurbachan Singh, Ferozepore; (20) Sardar Sajan Singh Mirjandpuri; (21) Sardar Jagjit Singh Mann; (22) Sardar Sardul Singh. Sardar Kapoor Singh, Speaker, East Punjab Legislative Assembly, presided.

The following proposals were unanimously adopted in regard to the safeguards for Sikh minorities to be provided in the Constitution. These proposals have also the support of almost all the members who could not

be present at the meeting.

1. The Sikh Backward Classes, viz., Mazhabis, Kabirpanthis, Ramdasias, Baurias, Sikligars etc. should be given the same privileges in regard to representation in the Legislatures and other political concessions in the East Punjab and PEPSU as may be provided for the Scheduled Castes. For this purpose, either these classes may be included in the schedule of Scheduled Castes enumerated in the Draft Constitution or seats may be reserved for them on population basis out of the quota reserved for Sikhs.

2. In the East Punjab, seats should be reserved for Sikhs according to their population with right to contest additional seats.

3. In Provinces other than the East Punjab and the Centre, the Sikh minorities where they are entitled to representation on the strength of their numbers should have seats reserved for them and where adequate numbers are not returned by election, their strength should be made good by nomination.

4. The Sikhs will be prepared to give up reservation in the East Punjab if Sikh and Hindu Scheduled Castes are lumped together and seats reserved for them on the strength of their population.

In case these proposals are not accepted, the whole question of safeguards for Sikh minorities may be referred to arbitration in accordance with the assurances given by the Congress.

(VII) REPORT OF THE ADVISORY COMMITTEE ON MINORITIES

May 11, 1949

FROM

The Hon'ble Sardar Vallabhbhai Patel,
Chairman, Advisory Committee on Minorities,
Fundamental Rights, etc.

TO

The President,
Constituent Assembly of India.

DEAR SIR,

The Advisory Committee on Minorities, Fundamental Rights, etc., in their report* dated the 8th of August, 1947, had recommended certain political safeguards for minorities. These were accepted by the Constituent Assembly during the August 1947 session, and have been embodied in Part XIV of the Draft Constitution. According to these recommendations, all elections to the Central and Provincial Legislatures were to be held on the basis of joint electorates with reservation of seats for certain specified minorities on their population basis. This reservation was to be for a period

*Vol. II, Document No. 12(i), pp. 411 ff.

of ten years at the end of which the position was to be reconsidered. There was to be no weightage, but members of the minority communities for whom seats were reserved were to have the right to contest general seats. The communities for whom seats were to be reserved were Muslims, Scheduled Castes and Indian Christians, the latter only so far as the Central Legislature and the Provincial Legislatures of Madras and Bombay are concerned.

2. I would recall to your mind at this stage that the committee had observed in their report that minorities were "by no means unanimous as to the necessity, in their own interests, of statutory reservation of seats in the Legislatures". Nevertheless, the committee had recommended reservation of seats "in order that minorities may not feel apprehensive about the effect of a system of unrestricted joint electorates on the quantum of their representation in the Legislature".

3. When the above recommendations were being considered by the Assembly, events were taking place, following the partition of the country, which made it impossible to consider the question of minority rights in East Punjab, particularly in so far as the Sikhs were concerned. This question of East Punjab was accordingly postponed; and also the question whether the right to contest unreserved seats should be given to minorities in West Bengal.

4. The Advisory Committee in their meeting held on the 24th February, 1948, appointed a special sub-committee consisting of myself as Chairman and the Hon'ble Pandit Jawaharlal Nehru, Hon'ble Dr. Rajendra Prasad, Shri K. M. Munshi, and the Hon'ble Dr. B. R. Ambedkar, as members, to report on these minority problems affecting East Punjab and West Bengal. This special sub-committee met on the 23rd November 1948 and presented a report to the Advisory Committee.

5. This report came up for consideration before the Advisory Committee at their meeting held on the 30th December, 1948. Some members of the committee felt that, conditions having vastly changed since the Advisory Committee made their recommendations in 1947, it was no longer appropriate in the context of free India and of present conditions that there should be reservation of seats for Muslims, Christians, Sikhs or any other religious minority. Although the abolition of separate electorates had removed much of the poison from the body politic, the reservation of seats for religious communities, it was felt, did lead to a certain degree of separatism and was to that extent contrary to the conception of a secular democratic State. Dr. H. C. Mookherjee, Mr. Tajamul Hussain, Shri Lakshmi Kanta Maitra and certain other members gave notices of resolutions seeking to recommend to the Constituent Assembly that there should be no reservation of seats in the Legislatures for any community in India. Shri V. I. Muniswami Pillai gave notice of an amendment to the said resolutions seeking to exclude the Scheduled Castes from the purview of the said resolutions. At that meeting I pointed out that if the members of a particular

community genuinely felt that their interests were better served by the abolition of reserved seats, their views must naturally be given due weight and the matter allowed to be reopened. At the same time I was anxious that the representatives of the minorities on the committee should have adequate time both to gauge public opinion among their people and to reflect fully on the amendments that had been proposed, so that a change, if effected, would be one sought voluntarily by the minorities themselves and not imposed on them by the majority community. Accordingly the committee adjourned without taking any decision and we met again on the 11th of May, 1949. At this meeting*, the resolution of Dr. H. C. Mookherjee found wholehearted support of an overwhelming majority of the members of the Advisory Committee. It was recognized, however, that the peculiar position of the Scheduled Castes would make it necessary to give them reservation for a period of ten years as originally decided. Accordingly the Advisory Committee, with one dissenting voice, passed the said resolution as amended by Shri V. I. Muniswami Pillai in the following form :

That the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished.

It was further decided that nothing contained in the said resolution shall affect the recommendations made by the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee and Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee with regard to representation of tribals in the Legislatures. The committee also decided that the resolution should not affect the special provision made for the representation of Anglo-Indians in the Legislature.

6. The committee also accepted the unanimous proposal made by the Sikh representatives that the following classes in East Punjab, namely, Mazhabis, Ramdasias, Kabirpanthis and Sikligars, who suffer the same disabilities as other members of the Scheduled Castes, should be included in the list of Scheduled Castes so that they would get the benefit of representation given to the Scheduled Castes. Subject to this change and to the above-mentioned resolution, the report of the special sub-committee appointed by the Advisory Committee was approved.

7. As a result of the above decisions, the resolution seeking to do away with the rights of minorities to contest general seats in addition to reserved seats in Assam and West Bengal, of which notices had been given by some members of the committee, were withdrawn.

8. The committee are fully alive to the fact that decisions once reached should not be changed lightly. Conditions have, however, vastly changed since August 1947 and the committee are satisfied that the minorities themselves feel that in their own interests, no less than in the interests of the

*Minutes not available.

country as a whole, the statutory reservation of seats for religious minorities should be abolished. The committee accordingly recommend that the provisions of Part XIV of the Draft Constitution should be amended in the light of the decisions now taken.

Yours truly,
VALLABHBHAI PATEL,
Chairman.

(VIII) VALLABHBHAI PATEL'S SPEECH MOVING THE REPORT IN
THE ASSEMBLY*
May 25, 1949

Sir, I have come before you to move for the consideration of the Report of the Advisory Committee which met during this month for the last time. The committee has, after completion of its work, been dissolved. The House will remember that in August 1947, probably on the 8th of August, a report was submitted by the Advisory Committee, and the Minorities Committee taking into consideration the Advisory Committee's report then submitted its proposals advising this House to adopt certain political safeguards for the minorities by way of reservations of seats in the Legislatures on the basis of population and also certain other safeguards.

Now, when this report was made, the House will remember that it was at a time when conditions were different and even the effect of partition was not fully comprehended or appreciated. At that time even when the report was passed suggesting the acceptance of reservation of seats in the Legislature on population basis, there was difference of opinion. Well, a group of people of highly nationalistic tendencies led by Dr. H. C. Mookherjee, Vice-President of this House, from the beginning opposed such reservations in the Constitution. Rajkumari Amrit Kaur also at that time stoutly opposed these reservations, but the minorities then were apprehensive of getting the quantum of their representation due to them on the basis of population; and the Advisory Committee, in spite of the difference of opinion, thought it necessary to allay the apprehensions of the minorities at that time, which they considered might be regarded as reasonable. The House will also recall that the representative of the Muslims in South India, Mr. Pocker, the no-changer and confirmed Muslim Leaguer, then proposed an amendment in this House when the proposals were submitted to the House, for introducing or continuing the separate electorate, the effects of which have been fully known and felt all over the country and, perhaps, known outside too. My proposals as Chairman of the Advisory Committee were then accepted by the House practically unanimously and a general sense of appreciation was expressed by the minorities when these proposals were

accepted. At a later stage we had to meet again because our proposals were incomplete in so far as the East Punjab and the West Bengal Provinces were concerned, because when the House passed the proposals in the August session of 1947, the effect of partition was not felt or known and the vast migrations that took place were at that time in a process of continuation and the position of the Sikhs was practically uncertain at that time. So also in Bengal the effect of the partition was not fully realized, and both the Provinces were desirous of postponing the question till the conditions were fully settled and the effects were fully realized. At a later stage in December a committee was appointed to consider this question. A sub-committee of five persons was appointed by the Advisory Committee in which our revered President was also one of the members; Pandit Jawaharlal Nehru, myself, Mr. Munshi and Dr. Ambedkar were the members of this committee. This committee met and made its report in February. When this report was made the representatives of the Sikh community wanted time to consider the report and consult their community in this matter. Also when the report was put before the Advisory Committee, the Muslim representatives, some of them, had changed their opinions after full reflection for a long period since the passing of the principles of the Constitution in the August session of 1947; they put forward the plea that all these reservations must disappear and that it was in the interests of the minorities themselves that such reservations in the Legislature must go. It was strongly pressed by the representative from Bihar and supported by other representatives. There was then a little difference of opinion and I was anxious, and so was the committee, that we should do nothing to take a snatch vote on a question of such vast importance. As the Sikh representatives wanted time to consider their position, we naturally adjourned and met again, during the early part of this month.

When we met this time, we found a considerable change in the attitude of the minorities themselves. Dr. Mookherjee moved a motion for the dropping of the clause on reservation of seats in the Legislature on population basis. When this proposal was moved, Mr. Muniswami Pillai, who was representing the Scheduled Castes, moved an amendment to the effect that the provision for reservation, so far as the Scheduled Castes are concerned, may be continued for a period of ten years. The general opinion in the Advisory Committee—which was almost unanimous—was that this reservation so far as the Scheduled Castes are concerned, should be continued for that period and that Mr. Muniswami Pillai's amendment should be accepted. The Sikh representatives brought in a proposal which, to a certain extent, was an improvement on the previous position. Whatever may be the object of that proposal, the Advisory Committee thought it fit to give due consideration to the proposal of the Sikhs, because the members of the committee always felt a sort of responsibility for the susceptibilities and sentiments of the Sikh community which has suffered

vastly by the partition of the Punjab. After a full debate, the committee came to the conclusion that the Sikh proposal to fall in line with the dropping of the reservation clause was, although diluted by another proposal which, in effect, gave them a sort of reservation on certain conditions, a great improvement. The committee considering the whole situation came to the conclusion that the time has come when the vast majority of the minority communities have themselves realized after great reflection the evil effects in the past of such reservation on the minorities themselves, and the reservations should be dropped.

In a House of about forty members of the Advisory Committee, there was only one solitary vote against the proposal. So we thought that although these proposals were accepted by this House in August 1947, it was due to us and to the House that we should advise this House to reconsider the position and put before the House a proposal which is consistent with the proclaimed principles of this House for the establishment of a genuine democratic State based purely on nationalistic principles. Therefore, when we found the changed atmosphere, we considered it our duty to come before this House to revise this former decision, which was provisional as has been laid down by this House in several cases. It is under these circumstances that these proposals have been brought before the House.

So far as the Sikh community is concerned, there is only one proposal which in effect, does not really differ from the principles that have been laid down by the Advisory Committee, because the Advisory Committee also has accepted the amendment of Mr. Muniswami Pillai that the reservation for the Scheduled Castes must continue. The Sikhs themselves have thought that certain classes of people amongst them, who have been recent converts, and who were originally Scheduled Caste Hindus, are suffering from the disabilities which the Scheduled Caste Hindus are suffering from for the fault of the Hindu community. The Sikhs are suffering for the fault of the Sikh community and nobody else. Really, as a matter of fact, these converts are not Scheduled Castes or ought not to be Scheduled Castes; because, in the Sikh religion, there is no such thing as untouchability or any classification or difference of classes. But, as unfortunately in this country the Hindu religion is suffering from the evil effects of certain customs and prejudices that have crept into the society, so also, the reformed community of the Hindus, called the Sikhs, have also in course of time suffered from degeneration to a certain extent. They are suffering from a complex which is called fear complex. They feel that if these Scheduled Castes who have been converted to Sikhism are not given the same benefits as the Scheduled Castes have been, there is a possibility of their reverting to the Hindu Scheduled Castes and merging along with them. So, the House will realize, and I do not propose to conceal anything from the House, that religion is only a cloak, a cover, for political purposes. It is not really

the high-level Sikh religion which recognizes this class distinction. The Sikhs, today, it should be recognized, have suffered from various causes and we have to regard with considerable tenderness of feeling in taking into consideration their existing state of mind and provide as far as possible to meet that situation. And so when these proposals were brought to us, in fact, I urged upon them strongly not to lower their religion to such a pitch as to really fall to a level where for a mess of pottage you really give up the substance of religion. But they did not agree. Therefore, the utmost that we can do is to advise those people in their community who were wanting these safeguards to go into the classification of Scheduled Castes. These people have now agreed to be lumped into the Scheduled Castes; not a very good thing for the Sikh community, but yet they want it, and we feel, for the time being, we would make that allowance for them. Theoretically the position is logically correct. They will be all Scheduled Castes; the Ramdasias, and three or four others, whatever they are, will all be called one Scheduled Caste. The Sikhs may call them Scheduled Caste Sikhs. After all, in the eye of religion, in the eye of God and in the eye of all sensible people they are one. These advantages are there reserved for a class of people, and therefore, although there was stout opposition from the Scheduled Caste people, who also naturally feared, and who had a justifiable fear complex that if they agreed to this, or if the House accepts this position, there is really a danger of forcible conversion from their class to the Scheduled Caste Sikhs, we have accepted it. Now our object is, or the object of this House should be, as soon as possible and as rapidly as possible to drop these classifications and differences and bring all to a level of equality. Therefore, although temporarily we may recognize this, it is up to the majority community to create by its generosity a sense of confidence in the minorities; and so also it will be the duty of the minority communities to forget the past and to reflect on what the country has suffered due to the sense of fairness which the foreigner thought was necessary to keep the balance between community and community. This has created class and communal divisions and sub-divisions, which in their sense of fairness they thought fit to create, apart from attributing any motives. We on our part, taking this responsibility of laying the foundations of a free India which shall be and should be our endeavour both of the majority—largely of the majority—and also of the minority community, have to rise to the situation that is demanded from all of us, and create an atmosphere in which the sooner these classifications disappear the better. Therefore, I will appeal to the House, particularly to the Scheduled Castes, not to resent or grudge the concession that is made in the case of the Sikhs, and I concede that this is a concession. It is not a good thing, in the interest of the Sikhs themselves. But till the Sikhs are convinced that this is wrong, I would allow them the latitude, consistent with what we think to be our principles of just dealings. So far as the other communities are concerned, I feel

that enough time was given when we met in February in the Advisory Committee when these proposals were brought forward on behalf of the minorities, particularly the Muslims, enough time was given to consult their own constituencies, their communities and also other minority communities. It is not our intention to commit the minorities to a particular position in a hurry. If they really have come honestly to the conclusion that in the changed conditions of this country, it is in the interest of all to lay down real and genuine foundations of a secular State, then nothing is better for the minorities than to trust the good-sense and sense of fairness of the majority, and to place confidence in them. So also it is for us who happen to be in a majority to think about what the minorities feel, and how we in their position would feel if we were treated in the manner in which they are treated. But in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country and that in India there is only one community (*hear, hear*). With these considerations, Sir, I move that the Report of the Advisory Committee be taken into consideration :

Resolved that the Constituent Assembly do proceed to take into consideration the Report dated the 11th May 1949 on the subject of certain political safeguards for minorities submitted by the Advisory Committee appointed by the resolution of the Assembly of 24th January 1947.

Resolved further—

- (i) that notwithstanding any decisions already taken by the Constituent Assembly in this behalf, the provisions of Part XIV of the Draft Constitution of India be so amended as to give effect to the recommendations of the Advisory Committee contained in the said report; and
- (ii) that the following classes in East Punjab, namely, Mazhabis, Ramdasias, Kabirpanthis and Sikligars be included in the list of Scheduled Castes for the Province so that they would be entitled to the benefit of representation in the Legislatures given to the Scheduled Castes.

PART TWELVE
FINANCIAL EMERGENCY

12

PROVISIONS REGARDING FINANCIAL EMERGENCY September-October 1949

[The Draft Constitution as settled by the Drafting Committee did not contain any provision relating to financial emergency. On September 5, 1949 the Constituent Assembly Secretariat forwarded a draft article 280-A on this subject to the Ministry of Finance for its comments. The Finance Ministry on September 8 suggested that a better method of dealing with this matter would be to place the Centre in a position to issue directions to States in financial matters, whenever it felt that the action taken by a State was likely to affect the stability of federal finance or was at variance with the financial or economic policy of the Centre; but if the adoption of this suggestion was not feasible, the Finance Minister would welcome and support the draft article as suggested by the Constituent Assembly Secretariat. On October 10, 1949 the Finance Ministry forwarded a redraft of the article. The correspondence between P. C. Bhattacharyya, Ministry of Finance, and S. N. Mukerjee of the Constituent Assembly Secretariat relating to the provisions regarding financial emergency is reproduced below.]

(I) DRAFT ARTICLE 280-A FORWARDED TO THE MINISTRY OF
FINANCE WITH CONSTITUENT ASSEMBLY SECRETARIAT
D. O. LETTER NO. CA 19/14/CONS/49
September 5, 1949

280-A. *Provisions in case of breakdown of financial stability or credit of India:* (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India is threatened he may by a Proclamation make a declaration to that effect.

(2) Any such Proclamation—

- (a) may be revoked by a subsequent Proclamation;
- (b) shall be laid before each House of Parliament;
- (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the

House of the People takes place during the period of two months referred to in sub-clause (c) of this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(3) During the period any such Proclamation is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the direction and to the issue of such other directions in this behalf as he may deem necessary and adequate for the purpose.

(4) Any such direction may include a provision requiring all Money Bills and other Bills to which the provisions of article 182 apply to be reserved for the consideration of the President after they are passed by the Legislature.

(II) D. O. LETTER NO. 27-JS(IP)/49 FROM P. C. BHATTACHARYYA,
MINISTRY OF FINANCE TO S. N. MUKERJEE, CONSTITUENT
ASSEMBLY SECRETARIAT
September 8, 1949

Please refer to your D. O. letter No. CA/19(4)/Cons./49, dated the 5th September, 1949, with which the draft of a new article 280-A, making provision in case of a financial crisis was enclosed. I have shown the draft to the Hon'ble the Finance Minister and his views are as follows.

2. While the new article suggested is satisfactory, there may be some difficulty in the practical application of its provisions. The advent of an economic crisis is not like that of war and it may be difficult to decide when the President would declare a situation as one which threatens the financial stability or credit of the country. It would be preferable from the point of view of the Finance Ministry if it could be provided that the Centre should be in a position to issue directions to States in financial matters, at any time whenever it feels that any action taken by a State is either going to affect the stability of federal finance or is at variance with the financial and economic policy of the Centre. In other words, a provision somewhat on the lines of article 234(2) of the Draft Constitution authorizing the Centre to give directions to a State as to the manner in which it should exercise its powers in relation to financial matters so as to conform to the financial and economic policy of the Centre, would have been preferable.

3. If, however, the Drafting Committee consider that the adoption of this suggestion is not practicable on the ground that it would evoke very strong

opposition from the States, the Finance Minister would welcome and support the inclusion of the draft article 280-A as drafted in the Constitution.

(III) D. O. LETTER NO. 15(91)-P/49 FROM P. C. BHATTACHARYYA
TO S. N. MUKERJEE
October 10, 1949

Apropos our conversation, I enclose herewith a redraft of the new article 280-A which is intended to make provision against a financial crisis or against a State running contrary to the Central Government's financial policy. Would you kindly glance through it and let me know your reactions? If you so desire, please give me a ring and I will come over to discuss.

ENCLOSURE

ARTICLE 280-A

280-A. Provisions in case of breakdown of financial stability or credit of India :

(1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India is threatened or the stability of the finances of the Union or the financial and economic policy of the Union is endangered, he may by a Proclamation make a declaration to that effect.

(2) Any such proclamation—

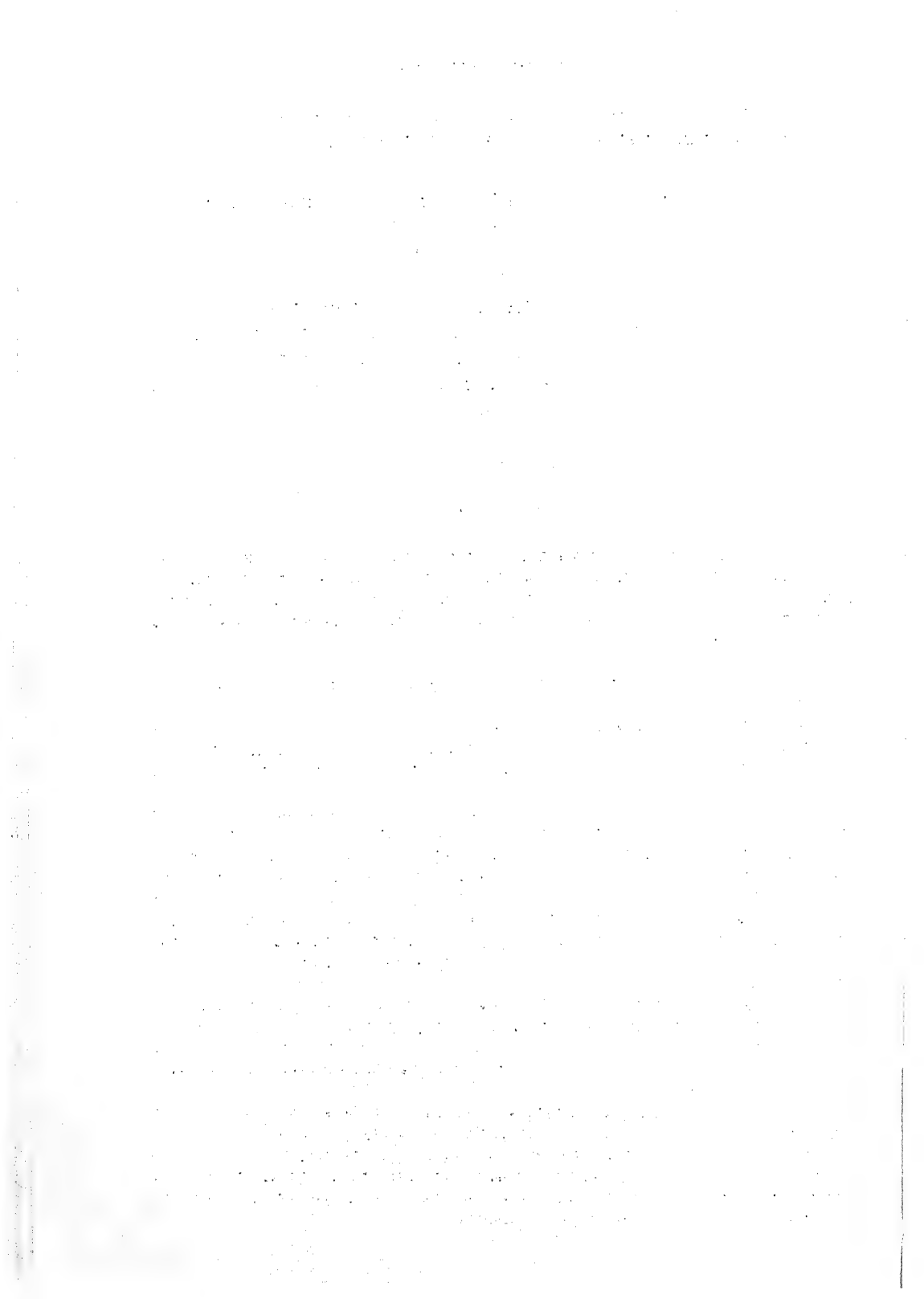
- (a) may be in respect of the Union or any State included in the Union;
- (b) may be revoked by a subsequent Proclamation;
- (c) shall be laid before each House of Parliament;
- (d) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (d) of this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(3) During the period any such Proclamation is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the direction and to the issue of such other directions in this behalf as the President may deem necessary and adequate for the purpose.

(4) Any such direction may include a provision requiring all Money Bills and other Bills to which the provisions of article 182 apply to be reserved for the consideration of the President after they are passed by the Legislature.

(5) Failure to comply with any directions issued under the provisions of clause (3) will be deemed to be failure to carry out the Government of the State in accordance with the provisions of the Constitution.



PART THIRTEEN
OFFICIAL LANGUAGE

PROVISIONS RELATING TO OFFICIAL LANGUAGE

November 1948—September 1949

[Neither the Draft Constitution prepared by the Constitutional Adviser nor the version as settled by the Drafting Committee contained any provisions relating to official language, but they contained provisions as to the language or languages to be used in the Union Parliament and the State Legislatures. The language issue figured prominently during the general discussion on the Draft Constitution; and the sharp differences of opinion which developed in the course of the debate revealed the extent of feeling which the question had engendered.]

In view of this, the consideration of the language provisions was deferred, and outside the Assembly discussions and consultations continued within the Congress Party at various levels to arrive at a solution acceptable to all shades of opinion. The Congress Party in the Assembly met in August, 1949, to consider the question of the official language. It was eventually decided after a great deal of discussion that Hindi should ultimately be the official language, with Devanagari as the script. But on a number of issues different views were expressed. A special committee was appointed consisting of members of the Drafting Committee and, in addition, Abul Kalam Azad, Govind Ballabh Pant, Purushottamdas Tandon, Balkrishna Sharma, Syama Prasad Mookerjee and K. Santhanam, to draft an appropriate provision. The committee suggested that English would be the only official language for ten years: thereafter, if both Houses of Parliament decided by a two-thirds majority of the members present and voting, it could be extended for another five years. The committee also suggested the adoption of international numerals. These suggestions were not accepted by the party. The search for general agreement continued, and the Drafting Committee made a further attempt to evolve such a formula. The proposals of the committee were again discussed by the party but no agreement emerged. There was keen controversy on a number of issues, particularly the arrangements for the transition period. The question of numerals also evoked differences.

Towards the end of August, 1949, Munshi and Gopalaswami Ayyangar prepared detailed draft compromise provisions for inclusion in the Draft Constitution. In a letter to the Chairman of the Drafting Committee on September 1, 1949, Ravi Shankar Shukla, the Premier of the Central Provinces and Berar, strongly advocated the replacement of English by Hindi as soon as possible.

The Munshi-Ayyangar draft again came up before the Congress Party on September 2. After a heated discussion votes were taken on the issue whether or not the draft should be moved in the Constituent Assembly as an official proposal on behalf of the Drafting Committee. It was finally decided that the question would not be decided on a party basis; that the Munshi-Ayyangar draft would be moved by Ambedkar, Munshi and Gopalaswami Ayyangar in their personal capacities; and members would be free to move amendments and vote as they pleased in the Assembly.

The draft provision on the official language prepared by Munshi and Gopalaswami Ayyangar as revised by the Drafting Committee, the letter of Ravi Shankar Shukla and the speech of N. Gopalaswami Ayyangar in the Assembly on September 12, 1949, are reproduced below.]

(I) DRAFT BY K. M. MUNSHI AND N. GOPALASWAMI AYYANGAR AS
REVISED BY THE DRAFTING COMMITTEE
August 24, 1948

CHAPTER I—LANGUAGE OF THE UNION

301-A. (1) THE OFFICIAL LANGUAGE of the Union shall be Hindi in Devanagari script *and the form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.*

(2) Notwithstanding anything contained in clause (1) of this article, for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union, for which it was *being used at such commencement :*

Provided that the President may, during the said period, by order authorize for any of the official purposes of the Union the use of the Hindi language in addition to the English language and of the Devanagari form of *numerals in addition to the international form of Indian numerals.*

(3) Notwithstanding anything contained *in this article*, Parliament may by law provide for the use of the English language after the said period of fifteen years for such purposes as may be specified in such law.

301-B. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in Schedule VII-A as the President may appoint, *and the order shall define the procedure to be followed by the Commission.*

(2) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the progressive use of the Hindi language for the official purposes of the Union ;
- (b) restrictions on the use of the English language for all or any of the official purposes of the Union ;
- (c) the language to be used for all or any of the purposes mentioned in article 301-E of this Constitution ;
- (d) *form* of numerals to be used for any one or more *specified* purposes of the Union ;
- (e) any other matter referred to the Commission by the President as regards the official language of the Union and the language of inter-State communication and *their* use.

(3) In making their recommendations under clause (2) of this article, the Commission shall *have* due regard to the industrial, cultural and scientific advancement of India, and the just claims and *the* interests of the non-Hindi speaking areas in regard to the public services.

(4) *There shall be constituted* a committee consisting of thirty members of whom twenty shall *be members* of the House of the People and ten shall *be members* of the Council of States *chosen respectively by the members of the House of the People and the members of the Council of States* in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the committee to examine the recommendations of the Commission constituted under this article and to report to the President their opinion *thereon*.

(6) Notwithstanding anything contained in *article 301-A of this Constitution*, the President may *after consideration of the report referred to in clause (5) of this article* issue directions in accordance with the whole or any part of the report.

CHAPTER II—REGIONAL LANGUAGES

301-C. Subject to the provisions of article 301-D and 301-E of this Constitution a State may by law adopt any of the languages *in use in the State* or Hindi as the language or languages to be used for all or any of the official purposes of that State :

Provided that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used at the commencement of this Constitution.

The language for the time being authorized for use in the Union for official purposes shall be the official language for communication *between one State and another State and* between a State and the Union :

Provided that if two or more States agree that the Hindi language shall be the official language for communication between such States, that language may be used for such communication.

301-E. Where on a demand being made in that behalf the President is satisfied that a substantial proportion of the population of a State *desires the use of any language spoken by them to be recognized by the State*, he may direct that *such language shall also be officially recognized throughout that State or any part thereof for such purposes as he may specify.*

CHAPTER III—LANGUAGE OF SUPREME COURT AND HIGH COURTS, ETC.

301-F. Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides—

- (a) all proceedings in the Supreme Court and in every High Court,
- (b) the authoritative texts—

- (i) of all Bills to be introduced or amendments *thereto* to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

- (ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or a Governor or a Ruler, as the case may be,

- (iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

301-G. *During the period of fifteen years from the commencement of this Constitution* no Bill or amendment making provision for the language to be used for any of the purposes mentioned in article 301-F of this Constitution shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under article 301-B of this Constitution and the report of the committee referred to in *that article*.

CHAPTER IV—SPECIAL DIRECTIVE

301-H. Every person shall be entitled to submit a representation *for the redress of any grievance* to any officer or authority of the Union or a State in any of the languages *used in the Union or in the State, as the case may be.*

301-I. It shall be the duty of the Union to *promote* the spread of Hindi and to *develop* the language so as to serve as a medium of expression for all the elements of the composite culture of India and to *secure its*

enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India, and drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

SCHEDULE VII-A

- | | |
|--------------|----------------|
| 1. Hindi. | 8. Telugu. |
| 2. Urdu. | 9. Tamil. |
| 3. Punjabi. | 10. Malayalam. |
| 4. Kashmiri. | 11. Canarese. |
| 5. Bengali. | 12. Marathi. |
| 6. Assamese. | 13. Gujarati. |
| 7. Oriya. | 14. English. |

(II) LETTER FROM RAVI SHANKAR SHUKLA TO THE CHAIRMAN,
DRAFTING COMMITTEE
September 1, 1949

I am sure you must be considering seriously how to reconcile different views of the members of the Constituent Assembly on the question of language. The introduction of international form of Indian numerals as part of the Hindi language to be used for official purposes of the Union came to us as a great surprise; it did not find place in your original draft. But I am inclined to think that the use of international form of numerals in addition to but not in substitution of Devanagari form can be tolerated. There can be no doubt that so long as the English language continues to be used as the official language of the Union, international form of Indian numerals is bound to be used at least for some specific purposes; and this matter can, I believe, be amicably settled. But the real crux of the language problem is the approach to the question of progressively using Hindi in place of the English language. There are only two ways of approaching this problem. One is to devise ways and means to substitute as early as possible Hindi in place of English. The other is to delay the use of Hindi in place of English as far and as long as possible and to continue the use of English after fifteen years even.

Let us be frank and honest. The second is decidedly a wrong approach. If we intend really to substitute Hindi for English, we must take recourse to the first approach. With this end in view, I am sending herewith a draft which shall give the Centre and the Parliament the liberty to use English as long as possible within fifteen years but at the same time have it substituted by Hindi as soon as possible within that period. The States should be free to adopt Hindi or any regional language or languages they like for official use in the States. If our Southern India friends wish to use

the English language for fifteen years, one should have no quarrel with them. But let English not continue to be an imposition on the rest of India. I have a feeling that our Madras friends are playing into the hands of those who do not like Hindi to be the official language of the Union.

I wish my draft to be placed in the hands of every member tomorrow at the party meeting. I think you will kindly have it cyclostyled and circulated : I have no means to do so here. I understand your committee is busy preparing a draft. If my suggestions commend themselves to you, they may be incorporated in your draft. I shall then place before the party as an amendment only that portion of my draft which may not find place in your draft. It is needless for me to say that a schedule of languages in the Constitution is wholly unnecessary in view of the precarious conditions in the country. A committee consisting of members representing so many languages can never solve the problem before us; it will delay and retard the progress and excuse me when I say that it is a reactionary provision intended to delay the introduction of Hindi as the official language of the Union.

P. S. I am not a draftsman. You may change the wording but keep the substance intact.

DRAFT

CHAPTER I—LANGUAGE OF THE UNION

301-A. (1) The official language of the Union shall be Hindi in Devanagari script.

(2) Notwithstanding anything contained in clause (1) of this article, for a period not exceeding fifteen years from the commencement of this Constitution, the English language shall continue to be used for all official purposes of the Union, for which it was being used at such commencement:

Provided that the President may, during the said period, by order authorize for any of the official purposes of the Union the use of—

- (a) Hindi language in addition to or in substitution of the English language, and
- (b) Indian numerals in international form for any one or more specific official purposes of the Union.

301-B. (1) After elections to the Parliament under the new Constitution take place, there shall be constituted a Parliamentary Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States, chosen respectively by the members of the House of the People and the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(2) It shall be the duty of the Committee to devise ways and means and make recommendations to the Parliament as to—

- (a) the progressive use of the Hindi language for official purposes of the Union ;
- (b) restrictions on the use of the English language for all or any of the official purposes of the Union ;
- (c) the language to be used for all or any of the purposes mentioned in article 301-E of this Constitution ;
- (d) form of numerals to be used for any or more specified purposes of the Union ;
- (e) any other matter referred to the Committee by the Parliament as regards the official language of the Union and the language of inter-state communication and their use.

(3) In making their recommendations under clause (2) of this article, the Committee shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of the non-Hindi speaking areas in regard to the public services.

(4) The recommendations of the Committee shall, from time to time, be placed before the Parliament which may accept them with or without modification or reject them in whole or in part as the case may be, and the recommendations, as accepted, shall be binding on the Union Government.

(5) At the expiration of ten years, the Parliament shall determine what steps should be taken so that at the expiration of fifteen years Hindi shall become the language for all official purposes of the Union.

CHAPTER II—REGIONAL LANGUAGES

301-C. A State may by law adopt Hindi or the language or languages in use in the State as the language or languages to be used for all or any of the official purposes of that State.

301-D. (1) The language for the time being authorized for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union :

Provided that if two or more States agree that the Hindi language shall be the official language for communication between such States, that language may be used for such communication.

(2) The authoritative texts—

- (i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,
- (ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or a Governor or a Ruler, as the case may be,

- (iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the official language of the State. But, during the period of fifteen years from the commencement of this Constitution, they shall be accompanied by an authoritative text in English.

301-E. Where on a demand being made in that behalf the President is satisfied that a substantial proportion of the population of a State not less than twenty per cent desires the use of any language spoken by them to be recognized by that State, he may direct that such language shall also be officially recognized throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III—LANGUAGE OF SUPREME COURT AND HIGH COURTS, ETC.

301-F. Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides—

- (a) all proceedings in the Supreme Court and in every High Court,
(b) the authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or a Governor or a Ruler, as the case may be,

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

CHAPTER IV—SPECIAL DIRECTIVE

301-G. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

301-I. It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India, and drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

It shall be the duty of the Union to promote the use of the Devanagari script throughout the territory of India.

(III) N. GOPALASWAMI AYYANGAR'S SPEECH IN THE
CONSTITUENT ASSEMBLY*
September 12, 1949

At the outset, I wish to say that I shall endeavour to the best of my ability to conform to the appeal you made at the opening of this afternoon's session. I shall try to be brief and, what is more, it will be my endeavour to be objective in dealing with this problem. The problem has been before us for quite a long time now. We have discussed it amongst ourselves in small groups, in larger groups in the country, in the press and so on. A great deal has been said on this problem in all these various places. Opinion has not always been unanimous on this question. There was, however, one thing about which we reached a fairly unanimous conclusion that we should select one of the languages in India as the common language of the whole of India, the language that should be used for the official purposes of the Union. In selecting this language various considerations were taken into account. I for one did not easily reach the conclusion that was arrived at at the end of these discussions because it involved our bidding good-bye to a language on which, I think, we have built and achieved our freedom. Though I accepted the conclusion at the end that that language should be given up in due course and in its place we should substitute a language of this country, it was not without a pang that I agreed to that decision.

* * *

The final decision, as all honourable Members know, on that particular question is that we should adopt Hindi as the language for all official purposes of the Union under the new Constitution. That, of course, is an ultimate objective to be reached. It certainly involves that when that achievement takes place, we have to bid good-bye to a language on which many of us have been reared and on the strength of which, as I said, we have achieved our freedom, I mean the kind of language.

That decision to substitute Hindi in the long run for the English language having been taken, we had to take also two subsidiary decisions which were involved in that one decision. Now the subsidiary decisions were that we could not afford to give up the English language at once. We had to keep the English language going for a number of years until Hindi could establish for itself a place, not merely because it is an Indian language, but because as a language it would be an efficient instrument for all that we have to say and do in the future and until Hindi established itself in the position in which English stands today for Union purposes. So we took the next decision, namely, that for a period of about fifteen years English

should continue to be used for all the purposes for which it is being used today and will be used at the commencement of the Constitution.

Then, Sir we had to consider the other aspects of this problem. We had to consider, for instance, the question of the numerals about which I shall have to say something more detailed in the few remarks that I shall permit myself. Then we had to consider the question of the language of the States and we took a decision that, as far as possible, a language spoken in the State should be recognized as the language used for official purposes in that State and that for inter-State communications and for communications between the State and the Centre the English language should continue to be used, provided that where between two States there was an agreement that inter-communication should be in the Hindi language, that should be permitted.

We then proceeded to consider the question of the language that should be used in our Legislatures and the highest courts of justice in the land and we came to the conclusion after a great deal of deliberation and discussion that while the language of the Union, Hindi, may be used for debates, for discussions and so forth in the Central Legislature, and where while the language of the State could be used for similar purposes in the State Legislature, it was necessary for us, if we were going to perpetuate the existing satisfactory state of things as regards the text of our laws and the interpretation of that text in the courts, that English should be the language in which legislation, whether in the form of Bills and Acts or of rules and orders and the interpretation in the form of judgments by judges of the High Court—these should be in English for several years to come. For my own part I think it will have to be for many many years to come. It is not because we want to keep the English language at all costs for these purposes. It is because the languages which we can recognize for Union purposes and the languages which we can recognize for State purposes are not sufficiently developed, are not sufficiently precise for the purposes that I have mentioned, viz., laws and the interpretation of laws by courts of law.

Then we have to recognize one broad fact, viz., that while we could recognize 'Hindi' as the language for the official purposes of the Union, we must also admit that that language is not today sufficiently developed. It requires a lot of enrichment in several directions, it requires modernization, it requires to be imbued with the capacity to absorb ideas, not merely ideas but styles and expressions and forms of speech from other languages. So we have put into this draft an article which makes it the duty of the State to promote the development of Hindi so that it may achieve all these enrichments and will in due course be sufficiently developed for replacing adequately the English language which we certainly contemplate should fade out of our officially recognized proceedings and activities in due course of time. Those, generally speaking, are the basis of this particular draft which I have moved.

Now, in considering this draft, I wish to place before the House one or two facts. The first that I wish to place before the House is that this draft is the result of a great deal of thought, a great deal of discussion. It is also—what has emerged—a compromise between opinions which were not easily reconcilable and therefore when you look at this draft, you have to take it not as a thing which is proposed by an individual member like me or by three members if I include my two colleagues whose names are set down here. It is not to be looked upon as something which we have put forth. It is the result of a compromise in respect of which great sacrifices of opinion, of very greatly cherished views and interests, have been sacrificed for the purpose of achieving this draft in a form that will be acceptable to the full House.

Now I wish to draw the attention of the House to one or two of the basic principles underlying this draft. Our basic policy, according to the framers of this draft, should be that the common language of India for Union purposes should be the Hindi language and the script should be the Devanagari script. It is also a part of this basic policy that the numerals to be used for all official Union purposes should be what have been described to be the All-India forms of Indian numerals. The authors of this draft contemplate that these three items should be essential parts of the basic policy in this respect for practically all time. I wish to emphasize that fact because I know there is a school of opinion in this House that so far as the international forms of Indian numerals are concerned they should be placed in this scheme on the same footing as the English language. Those of us who are responsible for this draft, do not subscribe to this proposition. We consider that to the same extent the Hindi language and the Devanagari script for letters in that language should form a permanent feature of the common language of this country, to the same extent should the international forms of Indian numerals be part of this basic policy. That is at the root of this draft.

It is true that in order to effect a compromise with those who hold a different view we made one or two concessions in this behalf which we thought would persuade the others to fall in line with us. One concession was that though the international forms of Indian numerals would be a permanent feature, the President, even during the first fifteen years during which the English language will continue to be used practically for all purposes, during that period he may direct that the Devanagari numerals also should in addition to the international forms of Indian numerals be used for one or more official purposes of the Union.

The second concession that was made was that the question of the form of Indian numerals to be used for particular official purposes should be one of those questions which the Commission which would be appointed under article 301-B would go into and it will be one of the duties of that Commission to make recommendations on that subject. We certainly

visualized the possibility of that Commission saying, "Let the international forms of Indian numerals be replaced altogether by the Devanagari form of numerals." But we were willing to make this concession, because we thought it would be a gesture which would be appreciated by those who take a different view, and we also were perfectly sure that before an impartial commission of the sort that will be constituted in the future, arguments in favour of the retention of the international forms of Indian numerals permanently will weigh more heavily than it might in the atmosphere of a House where opinion is so divided as it is today in this House. Well, we were willing to take those risks. I mention these facts to show how great a sacrifice those who stand for the basic policy which I have enunciated have had to make for the purpose of reaching an amicable understanding with the exponents of a different view.

Now, I do not think it will be necessary for me to recommend the claims of the international forms of Indian numerals to this House. They must have read a great deal about it already, and I am sure those who will follow me here will have a lot more to say about it and so I do not go into the history of this question. I will only mention one or two facts. These forms of numerals originated in our country, and therefore, we should be proud to continue the almost universal use of these numerals which is now made in this country as a part of the future language set-up in this country. (*Hear, hear*). Secondly, the whole world, perhaps with one or two exceptions, has adopted these numerals. It is but right that we should keep in step with the whole world, or it should be really the other way, the whole world is already ready to keep in step with us who really gave these numerals to the world. And shall we throw away this proud position in the world with all the attendant advantages that it brings to us? Shall we do so, in order to take to something which is not universally used even in this country and which it is impossible for the world at large to use in the future? Those two facts I should like to place particularly before this House before they reach a conclusion on this matter.

Now, Sir, with regard to this particular point, a number of alternatives have been proposed, but I would refer only to the latest which was put into your hands in the course of today, and that is the proposal which says it will place the international forms of Indian numerals practically on the same footing as the English language in the scheme of things. That means that for the first fifteen years, the international forms of Indian numerals will continue to be used and after that period Parliament might be left to decide for what purposes the international form or the Devanagari form should be used, or both should be used. It looks a very attractive proposition. But at the back of it is this feeling that you visualize the prospect of displacing that international form of Indian numerals altogether in this country. To those of us who are responsible for this draft, that is not a prospect which we can contemplate with anything like equanimity in the

largest interests of the country and the world. And therefore it is because of this wrong approach to the whole problem that I am constrained to say that it is not possible for those who hold our particular view to consider this alternative.

Now, Sir, a few words as regards the provision we have made in Chapter III, that is, the language of the courts. We consider it very fundamental that English shall continue to be used in the Supreme Court and the High Courts until Parliament, after full consideration, after Hindi has developed to such an extent that it can be a suitable vehicle for law-making and law-interpretation, comes to the conclusion that it can replace the English language. My own feeling is that English will last in the form of Bills and laws and interpretations of such laws, much longer than fifteen years. That is my own expectation. Now, it is important that we should realize why this Chapter has been put in. Law-making and law-interpretation require an amount of precision; they require a number of expressions and words which have acquired a certain definite meaning; and until we reach that stage in regard to the Hindi language—and I do not think at present the Hindi language is anywhere near it, ignorant as I am of Hindi myself (*hear, hear*)—I have seen a good deal of the Hindi translations of what happens in this House and I am constrained to say that even the little Hindi I know does not enable me to make out anything from that kind of translation. Perhaps people more versed in Hindi may be able to understand it; perhaps I do understand it sometimes, because of the large number of Sanskrit words that are used in these translations. But that is not Hindi, in the sense that you could use it for court or legislative purposes.

I can tell you a story within my own experience. Ten years ago, I was making a constitution for the State of Jammu and Kashmir. The language of the Legislature had to be described in a section, and those who were drafting it, those officers had simply copied out the language in the Government of India Act, that is to say, English should be the language, but if any member was unacquainted with it or was not sufficiently acquainted with the English language he might be allowed to speak in any language with which he was familiar. Well, it so happened that the late Sir Tej Bahadur Sapru happened to be in Srinagar when I was considering this draft, and I thought that I might take advantage of his presence there for advice and sent this draft to him. The only portion to which he objected initially was this section about the language of the Legislature. He said : "What, in an Indian State where Urdu is the language of the courts and schools, and so on, could you really put in the English language as the language of your Legislature?" I had a long discussion with him; I told him : "I quite see your point. I am willing to agree that the language of the Legislature should be Urdu to the extent that those people who are not acquainted with English should be permitted to speak in Urdu. But you are a great lawyer and supposing tomorrow I want you to appear before

either the High Court here or the Privy Council and argue and interpret a section of the constitution, if it is framed in Urdu would you feel happy?" He appreciated my point. I told him as a compromise: "I will put in Urdu as the language of the Legislature for debates with a proviso that the authoritative texts of Bills and Acts shall be in the English language." He instantly agreed to my suggestion and thought that this was the most sensible solution of the problem that confronted us both.

I am mentioning that to you, because at the present moment in India we have to face a similar problem. Our courts are accustomed to English; they have been accustomed to laws drafted in English; they have been accustomed to interpret in English. It is not always possible for us to find the proper equivalent to an English word in the Hindi language and then proceed to interpret it with all the precedents and rulings which refer only to the English words and not the Hindi words. That is why we felt it absolutely necessary—almost fundamental—to this Constitution if it is to work that this Chapter should go into it.

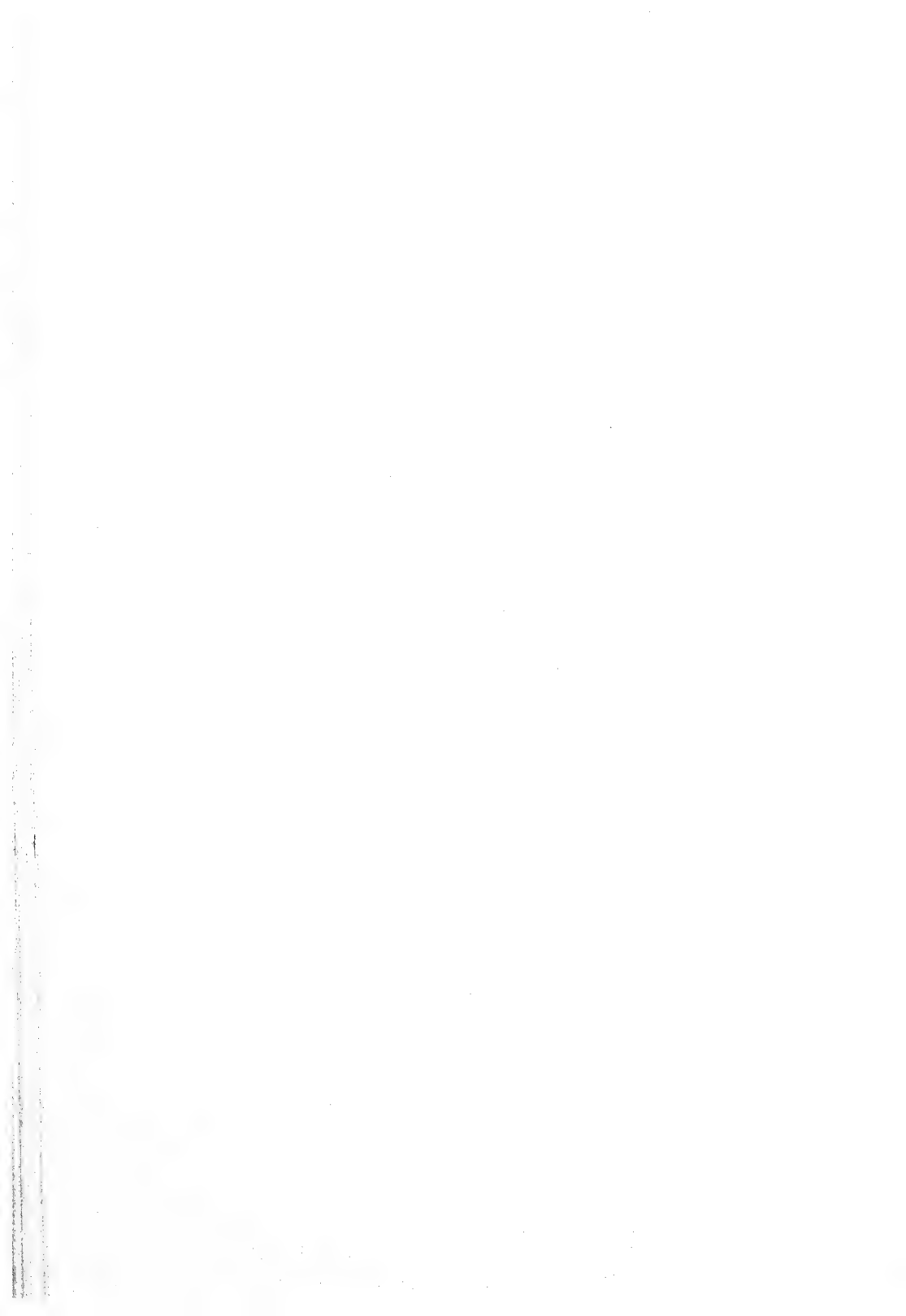
Sir, I do not wish to go into other matters, because I am afraid I have already exceeded the time you have fixed for me. I would only appeal to the House that we must look at this problem from a purely objective standpoint. We must not be carried away by mere sentiment or any kind of allegiance to revivalism of one kind or another. We have to look at it from the standpoint of practicability. We have to adapt the instrument which would serve us best for what we propose to do in the future and I for one agree with you, Sir, that it will be a most unhappy thing, a most disappointing illustration of our inability to reach an agreed conclusion on so vital a matter if on this point we have to divide the House. I am sure that good sense will prevail.

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PART FOURTEEN
SEVENTH SCHEDULE



SUGGESTIONS MADE BY THE MINISTRIES OF THE
GOVERNMENT OF INDIA FOR AMENDMENT OF THE
SEVENTH SCHEDULE

June 1949

[Certain suggestions were made by the Ministries of the Government of India for amendment of the Seventh Schedule to the Draft Constitution. The statement reproduced below contains the amendments suggested by the Ministries.]

**STATEMENT CONTAINING SUGGESTIONS MADE BY THE MINISTRIES OF THE GOVERNMENT OF INDIA FOR
AMENDMENT OF THE SEVENTH SCHEDULE TO THE DRAFT CONSTITUTION
June 1949**

Ministry	List and Entry	Amendments suggested	Remarks
(1)	(2)	(3)	(4)
UNION LIST			
Home Affairs	3. Preventive detention in the territory of India for reasons connected with defence, external affairs or the security of India.	In entry 3, substitute a semi-colon for the full stop at the end of the entry and insert the following words thereafter : "persons subjected to such detention."	[This is presumably intended to bring this provision into accord with the recent amendment made in the Government of India Act, 1935 May, 1949, see C.A. Deb., Vol. VIII pp. 73-77.]*
Defence	Ditto	..	Amendment given notice of by Yudhishthir Mishra suggesting the deletion of this entry should not be accepted.
Defence	4. The raising, training, maintenance and control of Naval, Military and Air Forces of the Union and their employment; the strength, organization and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule.	In entry 4, delete the words "of the Union", and add the following : "Territorial Army, National Cadet Corps, Militias, Scouts and other Armed Forces (excluding Armed Police)."	To make it clear that the Provinces will not have any authority to raise any military, naval or air force, the words "of the Union" should be deleted and the entry expanded as proposed. H. N. Kunzru has given notice of an amendment suggesting the deletion of the second part of this entry relating to the Armed Forces in the States. As the draft stands, it only gives powers to the Central Government to control the strength and organization of the Armed Forces raised and employed in the States. The question is whether the States should

continue to have their own forces under the new Constitution. From the Defence Ministry's point of view it would be best to have all the Armed Forces in India not only under the control of the Central Government but also owing allegiance only to the Central Government. Whether this is feasible at the present stage is a matter which can best be considered by the States Ministry.

5. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

Defence

..

Notice of amendment given by Syama Prasad Mookerjee, M. Mohammed Ismail, B. Pocker and K. T. M. Ahmed Ibrahim seeking to delete entry 5 should not be accepted.

Industry and Supply

Ditto

64. Development of industries where development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

For entries 5 and 64 the following new entry be substituted :
"The regulation of industries, where such regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest."

The scope of the powers the Union Government may exercise under entry 5 is not clear. There is also an overlap between entries 5 and 64. The word "necessary" will bring out the compelling need of Union control for example, in the event of a war.

Entries 32, 33, 36 and 37 of the State List will also need amendment in the light of the comments above.

[This suggestion was considered by the Drafting Committee in October 1948, but was not accepted. Since then, Syama Prasad Mookerjee has given notice of the following amendments :

3513. That entry 5 in List I be deleted.

*Note : The notes in square brackets in the remarks column are by the Constituent Assembly Secretariat. The other notes are by the respective Ministries.

Ministry	List and Entry	Amendments suggested	Remarks
(1)	(2)	(3)	(4)
Defence	.	7. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.	3552. That for entry 64 in List I, the following be substituted : "Development and regulation of any industry, the development and regulation whereof under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest".]
		..	
Works, Mines and Power.	"9. Atomic energy and mineral resources essential to its production."	For entry 9 the following be substituted : "Atomic energy and mineral resources essential to its production, strategic or key minerals essential for the defence of India."	Sidhva suggests either the deletion of the entire entry or the limitation of the scope of this entry very considerably. His amendment No. 3515* would have the effect of taking away from the States the power to regulate the relation between landlord and tenants in cantonment areas while amendment No. 3516* read with his amendment No. 3599* in List II proposes to transfer legislative power with regard to local self-government in cantonment areas from the Union to the States. The last two amendments, the Defence Ministry feel, would be retrograde and would make it impossible for the Centre to exercise the necessary control over the cantonments. In the circumstances, they feel that this entry should stand as in the Draft Constitution.
			The necessity for this change arises out of the need for Central control of strategic and key minerals, essential for the defence of India, which is equally important as Central control of minerals, essential for the production of atomic energy. The

power provided under entry 66 of the Union List is not considered adequate. The Centre should have absolute power of control and development of strategic and key minerals, as also minerals essential for the production of atomic energy.

[This suggestion was considered by the Drafting Committee in October, 1948 but was not accepted.]

In entry 37, for the words "by air or by sea" the words "by air, by rail, or by sea" be substituted.

For entry 38, the following be substituted :
"38. Railways."

[See also amendment suggested to entry 19 of State List.]

"37. Carriage of passengers and goods by air or by sea."

"38. Union railways: the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers."

These amendments have been suggested by the Secretary in the Law Ministry with the approval of the Law Minister and the Minister for Transport. The following extract from a note sent by the Law Secretary along with these amendments explains the reasons therefor :

"All the important company-run railways which existed before the war have been acquired by the Government of India. The number of private railway companies operating the Provinces or in the Acceding States is very small and the extent and importance of the railways run by them is comparatively even less. Minor railways under the management of a Provincial Government or of a local authority were always few in number and of no great consequence. With the cession of full jurisdiction by the rulers of various small States, and the consequent integration of those States with the Provinces, the Government of India have come to own a certain number of Indian State railways, the largest of which is that of Baroda."

*See Appendix I.

Ministry	List and Entry	Amendments suggested	Remarks
(1)	(2)	(3)	(4)
			<p>It should also be remembered that all States had agreed to accede generally in respect of communications, although when it came to drafting the Instrument of Accession under section 6 of the Government of India Act, it was found necessary to specify in terms item 20 of the Federal Legislative List. Thus in regard to an Indian State Railway within an Acceding State, the legislative and executive authority of the Centre extends only to the five subjects mentioned in that item, namely, (i) safety, (ii) maximum and minimum rates and fares, (iii) station and service terminal charges, (iv) interchange of traffic, and (v) the responsibility of railway administrations as carriers of goods and passengers. Despite this limitation the whole of the Indian Railways Act, 1890, has been extended by the Dominion Legislature to all Acceding States. Strict constitutional theory would not support the validity of this wholesale extension as respects Indian State railways and minor railways in Acceding States. While it is unlikely that any serious challenge will emerge on this ground, it is obviously desirable that when we are framing a new Constitution we should make the requisite provision to legalise what is obviously a practical requirement.</p>

I suggest, therefore, that in the new Constitution we should do away with all these distinctions between Union railways, Indian State railways (which designation, incidentally, is entirely inappropriate since the present Provinces are also to be called States) and minor railways, and assign all legislative and executive authority in respect of railways to the Union."

Entry 35 of List III should be brought into the Union List and entry 43 of the Union List be suitably amended.

"43. Acquisition or requisitioning of property for the purposes of the Union subject to the provisions of List III with respect to regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purposes of the Union."

Industry and Supply

The principles on which compensation is to be determined is in the Concurrent List (Entry 35) and unless Central Legislation is enacted it may happen that the acquisition or requisitioning of property for the purposes of the Union will, in so far as compensation is concerned, have to be dealt with under a number of different State laws. This would seem to be undesirable; besides, the principles on which compensation shall be assessed, whether the acquisition, etc., is for the purposes of the Union or a State should be uniform throughout the country.

[These suggestions were considered by the Drafting Committee in October 1948, but were not accepted.]

Commerce . . . "49. Insurance."

The Minister for Commerce, in a letter to the Chairman of the Drafting Committee, observes :

"You would have noticed that certain amendments †(Nos. 3537—3539, Volume II, Notice of Amendments) have

† See Appendix II.

Ministry	List and Entry	Amendments suggested	Remarks
(1)	(2)	(3)	(4)
			<p>been given notice of by S. T. Dhar-madhikari and K. Santhanam relating to entry 49 in List I of Schedule VII to the Draft Constitution of India. My own personal view is that entry should be left as it is without any qualification, or de-traction from the powers of the Union to be in full control of Insurance. I do not know if the Drafting Com-mittee or the party are likely to con-sider entertaining any amendments at all. If they propose to, I have carefully considered how far we could, without serious detri-ment to larger national interests, agree to the dilution of the unquali-fied entry that now stands in the Draft. I am afraid none of the amendments given notice of would be suitable. The farthest I would suggest that we could go, is that in lieu of the existing entry 49 in the Union List the two following entries may be inserted :</p> <p>“(1) In List I, for the existing entry 49, which reads “Insurance”, with-out any qualification, the following should be substituted, viz.,</p> <p>“The law of insurance and the re-gulation of the conduct of insurance business; Government insurance except so far as undertaken by a State with respect to any of the matters mentioned in List II.”</p>

(2) The following new entry to be inserted in List III :
 "Government insurance undertaken by a State with respect to any of the matters mentioned in List II; unemployment and social insurance."

Home Affairs . . . "52. Constitution, organization, jurisdiction and powers of the Supreme Court and fees taken therein."
 For entry 52, the following be substituted :
 "52. Constitution and organization of the Supreme Court and the High Courts; jurisdiction and powers of the Supreme Court and fees taken therein."

Labour . . . "57. Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies."
 In entry 57, for the words "professional or technical training," the words "professional, vocational or technical training" be substituted.

Home Affairs . . . "58. Union Public Services and Union Public Service Commission."
 For entry 58, the following be substituted :
 "58. Union Public Services; All-India Services; Union Public Service Commission."

Works, Mines and Power "63. Petroleum and other liquids and substances declared by Parliament by law to be dangerously inflammable, so far as regards possession, storage and transport."
 For entry 63 the following be substituted :
 "Regulation of oilfields and development of mineral oil resources; petroleum and petroleum products and other liquids and substances declared by Parliament by law to be dangerously inflammable."

The wording of present entry 57 leaves room for doubt whether vocational training is covered by it. Hence the proposed amendment.

Petroleum and petroleum products are of vital importance to the whole country and no individual Province or State can be expected to deal adequately with this subject. According to the Draft item 63 as it stands at present the Centre will have power to legislate only as regards possession, storage and transport. It is, however, very necessary that petroleum and petroleum products should be entirely within the Union List for *all purposes* including production, distribution, sale, etc., and not merely for possession, storage

Ministry	List and Entry	Amendments suggested	Remarks
1	2	3	4
Works, Mines and Power	"66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."	In entry 66, the words "and oilfields" be deleted.	and transport. Further, though Provinces may be allowed to retain certain powers regarding minerals and mineral development in general, it is essential that oilfields and mineral oil development should be made exclusively a Union subject. Hence the proposed redraft of entry 63.
			<p>The amendment to entry 66 is consequential on the above.</p> <p>Entry 28 of the State List will also require amendment so as to delete the words "and oilfields".</p> <p>[The Drafting Committee, after considering this suggestion in October 1948 have proposed the following amendment:</p> <p>"That in entry 63 in List I, the words "so far as regards possession, storage and transport", occurring at the end be deleted."]</p>
Industry and Supply	..	<p>The following new entry be added to the Union List :</p> <p>"Regulation of trade and commerce in and of the production, supply, price and distribution</p> <p>(a) of goods which are the products of the industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in public interest,</p>	<p>For effective implementation by the Union Government of the industrial policy announced by the Government of India on the 6th April, 1948, and for other reasons, it is necessary to invest the Union Government with certain powers over trade and commerce in respect of and the production, supply, price and distribution of the goods produced by the industries to be brought under Central regulation and certain other goods such as wholly imported articles or agricultural products.</p>

(b) of any other goods whose regulation similarly is declared by Parliament by law to be necessary or expedient in the public interest.”]

[This suggestion was considered by the Drafting Committee in October 1948 but was not accepted. Since then Syama Prasad Mookerjee has given notice of the following amendment : “That after entry 64 in List I the following new entry be added :

“64-A. Trade and commerce in, and the production, supply and distribution of—
(a) the products of industries the development and regulation whereof under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest; and

(b) any other goods, trade and commerce in, and the production, supply and distribution of which under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest”.]

Works, Mines and Power “74. The development of inter-State waterways for the purposes of flood control, irrigation, navigation and hydro-electric power.”

For entry 74 the following be substituted :
“Development of inter-State rivers and river valleys for the purposes of flood control, irrigation, navigation and hydro-electric power.”]

The word “waterways” emphasises the navigational aspect and might restrict the scope of Central control only to waterways, without giving the Centre any control on the river valleys as a whole. The redraft proposed is very essential for multipurpose river valley development.

[The Drafting Committee have, after considering this suggestion in October 1948 recommended the following redraft of this entry :

“The development of inter-State rivers and inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be expedient in the public interest.”]

Ministry	List and Entry	Amendments suggested	Remarks
(1)	(2)	(3)	(4)
Industry and Supply	"74. The development of inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power."	The words "the development of" be deleted.	This is intended to give more comprehensive scope to the entry.
Health	Ditto.	Entry 74 as proposed to be amended by Drafting Committee reads : "The development of inter-State rivers and inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be expedient in the public interest."	[This suggestion was considered by the Drafting Committee in October 1948, but was not accepted.] Many important towns in India are situated on inter-State rivers and waterways. Problems of river pollution by industrial wastes and sewage, diminution of city water supplies by the diversion of water for irrigation purposes and such like can give rise to serious problems of an inter-Provincial nature and it is necessary for the Union to have power to legislation to <i>regulate</i> such matters. The need for some such power for the Centre was recognised by the Bhore Committee.
Industry and Supply	"76. Manufacture and distribution of salt by Union agencies; regulation and control of manufacture and distribution of salt by other agencies."	Health Ministry desire the insertion of the words "or regulation" after the word "development" in both places where it occurs. For the words "manufacture and distribution" in the two places where they occur, the words "production, supply, price and distribution" be substituted.	[The Drafting Committee, after considering this suggestion in October 1948 have given notice of the following amendment : For the words "manufacture and distribution" in the two places where they occur, the words "manufacture, supply and distribution" be substituted.]

Agriculture	<p>• • • • • Union List . . .</p> <p>Add the following in the Union List :</p> <p>“Co-ordination of the development of Agriculture including animal husbandry, forestry and fisheries.”</p>	<p>These had already been considered by the Drafting Committee in October 1948 and were not accepted. The Agriculture Ministry have revived their earlier proposal that these should be accepted. They observe as follows :</p>
Agriculture	<p>• • • • • Concurrent List . . .</p> <p>Add the following new entries in the Concurrent List :</p> <p>(a) “Reclamation of waste lands on a large scale requiring the use of plant and machinery.”</p> <p>(b) “Forest Laws and working plans.”</p> <p>(c) “Inland Fisheries and Fisheries Laws.”</p>	<p>“The additions and alterations previously recommended in regard to agricultural development were based on the policy statement on Agriculture and Food issued by the Government of India in 1946 with the approval of the Cabinet and the cognizance of the Legislature. Since the declaration of the above policy statement, certain circumstances of considerable significance have come into being which render it necessary now to ask for the acceptance in full of the suggestions previously made.”</p>

STATE LIST

Home Affairs	<p>• • • • • “1. Public order (but not including the use of naval, military or air forces in aid of the civil power); preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.”</p>	<p>In entry 1, the following words be deleted :</p> <p>“preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.”</p>	<p>[Same as remarks against entry 3 of List I.]</p>
Home Affairs	<p>• • • • • “2. The administration of justice; constitution and organization of all courts, except the Supreme Court, and fees taken therein.”</p>	<p>For entry 2, the following be substituted :</p> <p>“The administration of justice; constitution and organization of all courts, except the Supreme Court and the High Courts; fees taken in all Courts except the Supreme Court.”</p>	

Ministry	List and Entry	Amendments suggested	Remarks
(1)	(2)	(3)	(4)
Defence	..	..	<p>Notice of amendment given by K. Santhanam seeks to insert a new entry 5-A as follows : "Provincial Militia."</p> <p>The Defence Ministry think that "this should never be accepted. The Provinsces should be permitted to have only whatever can be covered by the term 'Police'". The remarks against entry 4 of Union List may also be seen in this connection.</p>
Home Affairs	<p>"11. Elections to the Legislature of the State and of the Governor of the State for the constitution of a panel for the purpose of the appointment of a Governor for the State ; and Election Commission to superintend, direct and control such elections."</p>	<p>In entry 11, delete the words "and of the Governor of the State for the constitution of a panel for the purpose of the appointment of a Governor for the State ;".</p>	<p>[This is consequential on the decision of the Assembly that Governors of States are to be wholly nominated persons.]</p> <p>The Home Ministry express the hope that the latter part of this entry relating to Election Commission will be suitably amended so as to conform with articles 289 and 290 as passed by the Assembly, in June 1949. The Chairman of the Drafting Committee has already given notice of the necessary amendments.</p>
Home Affairs	<p>"12. The emoluments and allowances and rights with respect to leave of absence of the Governor of the State; salaries and allowances of the Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly,</p>		<p>The Home Ministry observe that it will probably be necessary to amend this entry in so far as it relates to the emoluments and allowances, etc., of Governors of the States so as to empower the Parliament to fix them. They are still considering the question.</p>

and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof ; the salaries, allowances and privileges of the members of the Legislature of the State."

"14. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration."

"15. Public health and sanitation; hospitals and dispensaries ; registration of births and deaths."

For entry 15, substitute :
 "15. Hospitals and dispensaries"
 and insert the following new entry in the *Concurrent List* (List III) :
 "Public health and sanitation; registration of births and deaths; vital statistics."

Notice of amendments given by Sidhva (Nos. 3598 and 3599*) would confer on the Provinces powers of legislation in regard to local self-government in cantonment areas, the regulation of house accommodation in such areas and the delimitation of such areas. The Defence Ministry feel that these should not be accepted.

It is most essential that the Centre (Union) should have power to legislate for the whole of India when necessary on any matter concerning Public Health and the compilation of vital statistics. The absence of power for the Centre to legislate on subjects relating to Public Health has impeded the progress of uniform health development. It is also obvious that to be of value the compilation of vital statistics should be regulated as far as possible on uniform lines throughout the country and for this the subject should be in the Concurrent List.

[*Cabinet's recommendation*: It would be sufficient if an entry "public health and vital statistics" is added to the Concurrent List. This would cover "registration of births and deaths".]

* See Appendix I.

Ministry	List and Entry	Amendment suggested	Remarks
(1)	(2)	(3)	(4)
Home Affairs	15. Public health and sanitation ; hospitals and dispensaries ; registration of births and deaths.	For entry 15, the following be substituted : "15. Hospitals and dispensaries."	[See remarks against same suggestion by Health Ministry.]
Labour	18. Education including Universities other than those specified in entry 40 of List I.	Add the following at the end of entry 18 : "and subject to the provisions of List III as regards professional, technical and vocational training."	Consequential on the proposed amendment to entry 57 of List I.
Law	19. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I ; minor railways subject to the provisions of List I with respect to such railways ; municipal tramways ; ropeways ; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways ; ports, subject to the provisions in List I with regard to major ports ; vehicles other than mechanically propelled vehicles.	In entry 19, delete the words "minor railways subject to the provisions of List I with respect to such railways". [Consequent to the amendment proposed above, the definition in clauses (s), (t) and (u) of article 303 (1) would become unnecessary.]	[See remarks against entries 37 and 38 of Union List.]
Food	32. Trade and commerce within the State ; markets and fairs.	Transfer these entries to the Concurrent List.	[See copy of Office Memorandum No. CG. 603(44) from the Ministry of Food, June 28, 1949.]*
	33. Regulation of trade, commerce and intercourse with other States for the purposes of the provisions of article 244 of this Constitution.		

Health 38. Adulteration of foodstuffs and other goods. It is necessary that the Centre should have power to legislate regarding adulteration of foodstuffs and other goods on a uniform basis for the whole of India. At present the Food Adulteration Acts are all Provincial and the standards laid down are not always uniform. The Central Advisory Board of Health had pointed out some time ago the need for All-India legislation in the matter of foodstuffs.

[*Cabinet's recommendation* : Agrees to the proposed transfer. It should however be examined whether it would not be advisable to alter the words "other goods" in the entry to "other articles of human consumption".]

Works, Mines and Power. For entry 58, the following be substituted :
 "Taxes on the sale, turnover, or purchase of goods including taxes in lieu thereof on the use of goods liable to taxes within the State on sale, turnover or purchase; taxes on advertisements."
 The amendments proposed are necessary to prevent pernicious taxation by the Provinces on multipurpose river valley or electrical development projects sponsored by the Central Government. For instance, the Damodar Valley Corporation may well be handicapped if Bihar and/or West Bengal impose unreasonable taxes on the sale of water for irrigation and the sale or consumption of electricity for industrial or other purposes.

[The Drafting Committee considered these suggestions in October, 1948 but did not accept them.]

60. Taxes on the consumption or sale of electricity. For entry 60, the following be substituted :
 "Taxes on the consumption or sale of electricity, subject to any limitations imposed by Parliament by law."

* See Appendix III.

Ministry	List and Entry	Amendments suggested	Remarks
(1)	(2)	(3)	(4)
Industry and Supply	62. Taxes on luxuries, including taxes on entertainments, betting and gambling.	The words "taxes on luxuries, including" be deleted.	The word "luxuries" is vague. [This suggestion was considered by the Drafting Committee in October 1948 but was not accepted.]
CONCURRENT LIST			
Home Affairs	2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.	After entry 2, the following new entry be added : "2-A. Preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention."	[Same as remarks against entry 3 of Union List.]
	3. Removal of prisoners and accused persons from one State to another State.	For entry 3, the following be substituted : "3. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons connected with the maintenance of public order."	[Same as remarks against entry 3 of Union List.]
Labour		Add the following new entry after entry 17 : "17-A. Vocational and technical training of labour."	By the Ministry of Industry and Supply Resolution of the 6th April, 1948, the Central Government has undertaken responsibility for the development, regulation and control of all major industries. As this question is intimately bound up with the availability of skilled technicians and

craftsmen, training in technical and vocational trades has to be co-ordinated by the Central Government to bring the trainees up to uniform standards. It is obvious that this cannot be achieved if training is left entirely to the States, and it is therefore necessary that power should be taken by the Central Government to co-ordinate policy in respect of such training. It is accordingly proposed that a new entry "Vocational and technical training of labour", should be added to the Concurrent List.

[See remarks against same suggestion by Health Ministry.]

After entry 18, the following new entry be inserted :
 "18-A. Public health and sanitation; registration of births and deaths; vital statistics."

Transfer entry 32 to the Union List.

Home Affairs

Information and Broadcasting. "32. The sanctioning of cinematograph films for exhibition."

The item has been included in the Concurrent List in the present draft, presumably in keeping with the existing position in regard to the administration of censorship. But, under the second exception to sub-section (1) of section 8 of the Government of India Act, 1935, inserted by a recent amendment, the Government of India propose to introduce legislation for the setting up of a Central Board of Film Censors in place of the existing Provincial Boards. When such a Central Board is set up, there will be no question of exercise of concurrent legislative authority by the Provincial Governments. There seems to be therefore hardly any point in retaining item 32 in the Concurrent List in the Draft Constitution.

Ministry	List and Entry	Amendments suggested	Remarks
(1)	(2)	(3)	(4)
Home Affairs	"33. Persons subjected to preventive detention under the authority of the Union."	Delete.	<p>Apart from the need for uniformity in censorship of films for the sake of which it is proposed to centralize censorship, it is important to develop films as a medium of education and publicity. It is the Union Government who will be primarily interested in this aspect of development and it is therefore considered essential that on the analogy of 'Broadcasting', which comes under item 28 of the Union List, "sanctioning of cinematograph films for exhibition", should also be within the exclusive legislative and executive jurisdiction of the Union Government.</p> <p>[Same as remarks against entry 3 of Union List.]</p> <p>Social planning in its broad aspects must necessarily include educational and health planning and for clarification the entry may be amended as proposed.</p> <p>[Cabinet agrees to the proposed change.]</p> <p>There are a large number of mineral water-springs or spas with medicinal properties in different parts of India which are at present largely neglected. It will be in the national interest to develop and regulate them in a proper manner so that people desiring to take advantage of these spas may be encouraged to resort to them for treatment in large numbers. If the spas are well developed and form good</p>
Health	"34. Economic and social planning."	For entry 34, the following be substituted : "34. Educational, Health, Economic and Social Planning."	
Health	..	The following new entry should be added : "Development and regulation of mineral water-springs or spas."	

Centres for treatment as at Karlsbad in Czechoslovakia or at Vichy, etc., in France, they may attract visitors from abroad; particularly from South-East Asia and thus add to our invisible imports and help the national economy. Proper regulation of the spas will also be necessary to enable an industry to develop for the bottling and sale of these valuable mineral waters. For a proper and co-ordinated development of these springs it is desirable that the subject should be in the Concurrent List.

Add the following new entries in the Concurrent List :

(i) "Measures aimed at increasing food production, regulation of prices and inter-State traffic in agricultural commodities including cattlefeeds and manures, agricultural machinery, implements and cattle and crop planning."

(ii) "Improvement of agricultural statistics."

The partition of the country has made the food situation in India and the consequential need for increasing food production one of greater importance than ever before. The determination not to import any foodgrains after 1951, except in case of a grave emergency has made the Central Government responsible for the implementation of a food self-sufficiency plan in order to attain the goal of freedom from imports by 1951. While the Provincial Governments have to execute the plan, only Central guidance and co-ordination can instil vigour and initiative in the food production drive. Agricultural policy as a whole, and the planning involved in executing this policy have assumed an all-India importance. The Central Government have to be responsible for the preparation, in consultation with the Provinces and States, and for the co-ordination of an all-India plan for increasing the food production. This involves fixing of targets of production and of allocation of these

Ministry	List and Entry	Amendments suggested	Remarks
(1)	(2)	(3)	(4)
			<p>targets to Provinces and States and rendering assistance to the Provinces and States for achieving these targets by supply of machinery and fertilisers. It may also involve the Central Government in assuming direct responsibility for such measures like land reclamation etc. which, left to their slender revenues, individual Provinces and States may not be able to develop. In a situation when supplies of essential machinery and materials are short, the Central Government must also perform the function of procuring the maximum quantities of such machinery and material and ensuring that the limited supplies are used to maximum advantage. In other words, movement of foodstuffs and means of agricultural production between one Province and another, regulation of prices and such like matters, have to be hereafter brought into the sphere of Central Legislation. Therefore, in order that an all-India policy of food production may be effectively and systematically carried out, the Centre should have powers to legislate on "measures aimed at increasing food production, regulation of prices and inter-State traffic in agricultural commodities (including cattlefeeds) and manures". In the absence of such powers, the component units in the country may follow a unilateral policy to the detriment of the all-India plan.</p>

Instances are not lacking where Provinces have sought to take such action.

The partition of the country and the consequent loss of jute and medium and long staple cotton areas has rendered the introduction of intelligent crop planning as between food-grains, sugarcane, jute and cotton, a matter of vital significance. This is a matter in which a Province or a State should hardly be allowed to act in isolation and the Centre would therefore require powers to legislate on crop planning on an all-India basis.

In more advanced countries, collection and analysis of important statistics relating to food and agriculture are taken to be fundamental for greater food production. This does not hold good for less developed countries including India where 'agricultural census' is poorly developed and is practically non-existent. In these circumstances, even the basic facts are lacking for the formulation of practical targets of agricultural production. Thus one of the fundamental needs today for the development of agriculture, forestry and fisheries as well as rural industries is improvement of the machinery for taking censuses, collecting and issuing current statistics and interpreting them. There is also considerable lack of uniformity in the Provinces and States in regard to the machinery for the collection of agricultural statistics, particularly at the primary level. It is essential, therefore, for the Centre to assume powers to improve agricultural statistics and the machinery for their collection throughout India on uniform basis.

APPENDICES

I

Notice of amendments by R. K. Sidhva :

3515. That for entry 7 in List I the following be substituted:

7. Delimitation of the cantonment areas, management of lands within such areas, regulation of house accommodation and relation between landlord and tenants within such areas, local self-government in such areas, and the constitution, finance, functions and powers of local bodies in such cases.

3516. That in entry 7 in List I the words "Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities" be deleted and for the words "in such areas" the words "in cantonment areas" be substituted.

3598. That the following be added to entry 14 in List II :

Local self-government in cantonment areas, the regulation of house accommodation in such areas and the delimitation of such areas.

3599. That in entry 14 in List II, the full stop at the end be substituted by a comma and the following be added:

including local self-government in cantonments.

II

Notice of amendments by Thakur Chhedi Lal and S. T. Dharmadhikari :

3537. That entry 49 in List I be deleted.

3538. That for entry 49 in List I the following be substituted:

49. Insurance except as regards insurance undertaken by a State relating to any matter in this List or in the Concurrent List.

Notice of amendments by K. Santhanam :

3539. That in entry 49 in List I, for the word "Insurance" the words "Insurance other than State Insurance" be substituted.

III

OFFICE MEMORANDUM NO. CG. 603(44) FROM THE MINISTRY OF FOOD
June 28, 1949

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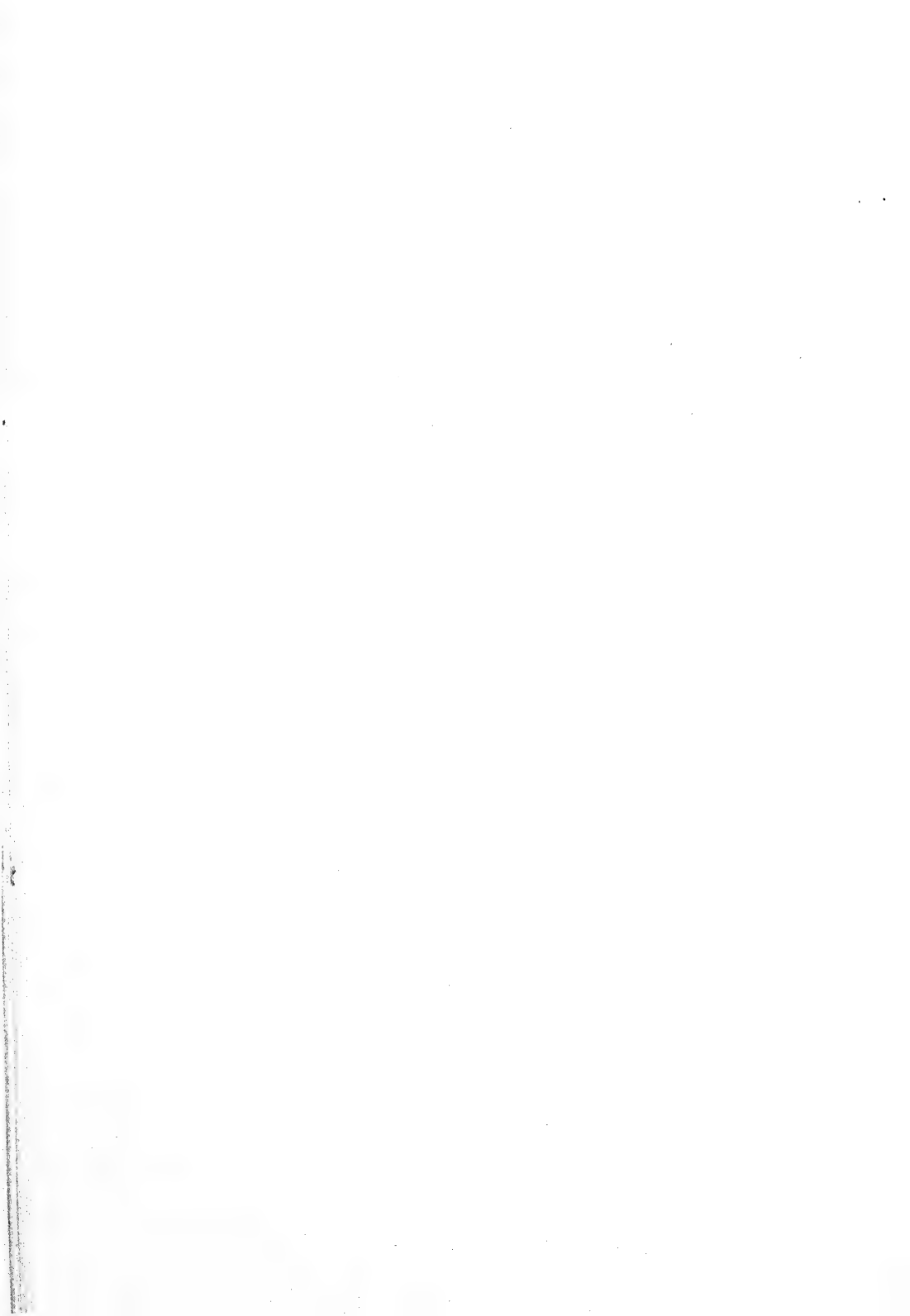
In the Draft Constitution of India the main provisions which relate to trade and commerce in, and production and supply of, foodstuffs are contained in articles 244 and 306. 'Trade and Commerce' should be considered in its two main aspects, viz., (1) trade and commerce within one of the component units of the Indian Union to be known as the "State", and (2) regulation of trade, commerce and intercourse with other States by one of the States. Article 244 governs the latter aspect of trade and commerce and article 306 applies to the former aspect. In addition to these two statutory provisions contained in the Constitution one has also to look to the three Legislative Lists contained in the Seventh Schedule. List I which mentions items on which the Central Government alone will be empowered to legislate, does not contain either trade and commerce within the State or trade, commerce and intercourse with other States. These two items are distinctly shown

in the State List and are also absent from the Concurrent List. Thus, when the new Constitution will come into force, regulation of trade and commerce both within and without a State will become the function of the various States in the Indian Union. But the Drafting Committee has apparently thought it fit to provide in article 306 that the Central Government will have the power to make laws with respect to trade and commerce within a State in, and the production, supply and distribution of, foodstuffs (including edible oilseeds and oil) for a period of five years from the commencement of the new Constitution. During this period trade and commerce within a State in, and the production, supply and distribution of, foodstuffs will be considered as if they were matters enumerated in the Concurrent List. Thus, after the expiry of the period of five years, these matters become the absolute concern of the individual States and States will be within their rights to legislate in respect of these matters in any way they like, subject to one safeguard which is contained in article 243. It is that "no preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air". This provision only ensures that any particular State will follow a uniform policy with regard to trade and commerce in any commodity, including foodstuffs, *vis-a-vis* all other States in the Indian Union, but the States' inherent jurisdiction to pass any acts which will restrict or promote trade and commerce in any particular commodity *vis-a-vis* the other States of the Union cannot be curtailed or challenged in any other way. It is possible that in future years the governments in all the States as well as the Centre will not belong to the same political complexion and it is quite probable that in some of the States the character of the government will be different from the character of the government in the majority of the States as well as in the Centre. In such a contingency there is every likelihood that the legislation passed by such States will not be in consonance with the policies pursued by other States as well as by the Centre. Such legislation, though it might be considered to be in the public interest of that particular State, might not be compatible with the pattern of legislation in the other States as well as by the Centre. Such a state of affairs is likely to lead to unnecessary friction and it is desirable that notwithstanding any powers which the States possess in regard to the regulation of trade and commerce the Centre should also possess powers in regard to the same items so as to be able to enforce uniformity in circumstances in which it finds that the various component units of the Indian Union are following policies which are at loggerhead with one another. Apparently it is on this consideration that the Drafting Committee has provided in article 306 that for at least five years since the commencement of the new Constitution the Centre shall possess concurrent jurisdiction to legislate in regard to matters connected with trade and commerce in the States. The same considerations might be taken to their logical conclusion and a provision may be made for concurrent jurisdiction in such matters in both the States as well as the Central Government. It therefore seems necessary for this purpose to include items 32 and 33 relating to trade and commerce within the State and regulation of trade, commerce and intercourse with other States contained in the State List in the Draft Constitution, in the Concurrent List and to delete them from the State List. As a result of this change in the lists in the Seventh Schedule, article 244 may have to be amended suitably in order to give the necessary authority to the Centre instead of it being reserved only for the State as at present.

3. Even in regard to the temporary authority given to the Centre in article 306, there are several commodities in respect of which the Centre does not possess the necessary authority to control production, supply and distribution. There is no adequate definition of foodstuffs. On the other hand, special provision is made for

oilseeds and oils by adding the words "including edible oilseeds and oils" after "foodstuffs". It is not known whether foodstuffs will also include salt. In this Ministry, however, we shall assume that foodstuffs will include generally everything that can be used as, or is necessary for the purpose of preparation of, food. This article makes no provision for fuel and cotton. In Provinces like Delhi which do not grow any foodstuffs in large quantities or produce cotton or fuel adequate for the needs of the population, article 306 as it is drafted at present gives no authority to the Centre to pass necessary legislation for the regulation of trade in such commodities. Therefore, even the enabling article, the period of whose validity is only five years from the commencement of the Constitution, is itself not sufficient for the purpose for which it seems to have been framed. It is, therefore, desirable to make the addition in the Concurrent List and delete the two items 32 and 33 from the State List so that the Centre's general power of superintendence for the welfare of the people may remain unimpaired.

PART FIFTEEN
PREMIERS' CONFERENCE, JULY 1949



CONFERENCE OF THE DRAFTING COMMITTEE WITH PREMIERS OF PROVINCES AND INDIAN STATES AND CENTRAL GOVERNMENT REPRESENTATIVES

July 1949

[The consideration of the Draft Constitution, clause by clause, was taken up by the Constituent Assembly on November 15, 1948. Considerable progress had been made by the Assembly by June 1949. Reviewing the position at a meeting of the Drafting Committee on June 14, 1949, Ambedkar, the Chairman of the Committee, said that the consideration of the non-controversial provisions would be completed in a day or two. At the same time, he drew attention to the fact that a number of controversial provisions still remained. It was considered necessary to consult the Ministries of the Government of India and Provincial Governments on several of these matters. Ambedkar further pointed out that the provisions relating to language, citizenship, etc., consideration of which had also been postponed, had to be further examined. In view of all these considerations, it was decided that the Constituent Assembly should adjourn on June 16 for about a month. During this period, the Ministries of the Government of India were to be addressed and their views invited on various outstanding items; and the Drafting Committee would meet about ten days or so before the Assembly was due to reassemble. At the same time, the Premiers of the Provinces would also be invited for discussions with the Drafting Committee on matters which affected them, particularly the provisions relating to the distribution of revenues between the Centre and the States, the emergency provisions, etc. The Drafting Committee would invite to its meetings representatives of the Ministries of the Government of India, if necessary. It was expected that in this way the Drafting Committee would be in a position to make its final recommendations to the Assembly on all controversial issues.]

In pursuance of this decision, a meeting of the Provincial Premiers, which was also attended by the Finance Ministers of some of the Provinces, the Premiers and Finance Ministers of some of the Indian States, and some Central Ministers, was held on July 21, 22, 23, and 24. A wide range of matters was discussed. The amendments proposed to the legislative lists; the question whether there should be provision for separate Auditors-in-Chief for the units: the financial and taxation provisions (including borrowing powers); the composition of Legislative Councils in States; the definition of Scheduled Tribes and Scheduled

Castes; the fundamental right to hold property; all these matters were discussed. Differences of opinion arose mainly on certain financial powers—the imposition of limitations on the powers of States to levy sales-tax and the liability to Union taxation of property belonging to States and business enterprises run by them.

After the conclusion of the conference the Health Minister in a letter to B. R. Ambedkar strongly urged that the entry "Public Health" should be transferred to the Concurrent List and that that list should also contain an entry relating to "Drugs".

The minutes of the Drafting Committee meeting held on June 14, 1949, the papers circulated in connection with the conference, the minutes of the conference and the letter of the Health Minister are reproduced below.

(I) MINUTES OF THE DRAFTING COMMITTEE June 14, 1949

Present : (1) The Hon'ble Dr. B. R. Ambedkar (*Chairman*); (2) The Hon'ble Shri N. Gopalaswami Ayyangar; (3) Shri T. T. Krishnamachari; (4) Shri Alladi Krishnaswami Ayyar; (5) Shri N. Madhava Rao; (6) Shri K. M. Munshi.

The Hon'ble the President of the Assembly was also present. The following attended the meeting by special invitation: (1) The Hon'ble Shri Jawaharlal Nehru; (2) The Hon'ble Shri Satyanarayan Sinha; (3) Dr. Bakshi Tek Chand.

The committee considered the programme of work of the Assembly relating to the consideration of the articles of the Draft Constitution and amendments thereto which had been held over or not yet been taken up. The Chairman of the committee explained that the consideration of the non-controversial provisions which might be disposed of during the present session would be completed in the next two days and that, as far as the controversial provisions were concerned, these would require consultation either with certain Ministries of the Government of India or with the Provincial Premiers. It was further pointed out by him that there were also the provisions relating to language, citizenship, etc., which would require further consideration before decisions could be taken, and that an adjournment for a short period would therefore be necessary before the Assembly could take up the controversial matters.

After some discussion it was decided that the Assembly should adjourn on the 16th for about a month and office should write to the various Ministries of the Government of India inviting their views on those provisions of the Constitution which had been held over or which had not yet been considered and that the Drafting Committee should then meet for

about ten days immediately before the Assembly was due to re-assemble again. At the same time that the Drafting Committee met, the Provincial Premiers should be invited for discussion with the committee on the matters with which they would be concerned, *e.g.*, provisions relating to distribution of revenues between the Centre and the units, emergency provisions, etc. The Drafting Committee should also invite to its meetings, if considered necessary, representatives of the appropriate Ministries of the Government of India, so that when the Assembly met again in July, the committee might be in a position to make its final recommendations on all the controversial issues. In July-August, the Assembly should sit continuously from day to day until the article-by-article consideration of the whole of the Draft Constitution was completed. It was agreed that in any case the article-by-article consideration of the Draft Constitution should be completed by the 15th of August.

On a suggestion made by one of the members, it was decided that Sir George Spence, at present Legal Adviser to the Hyderabad Government, should be invited to scrutinize the Draft Constitution from the drafting point of view. The Hon'ble the Prime Minister agreed to arrange for obtaining the services of Sir George Spence.

The office was directed to prepare a time-table for the meetings of the Drafting Committee with Provincial Premiers, Ministries of the Government of India etc., and also to prepare detailed agenda for the meetings showing the subjects to be discussed together with any memoranda thereon.

(II) PAPERS CIRCULATED TO THE CONFERENCE

(A) AMENDMENTS SUGGESTED BY THE MINISTRIES TO THE SEVENTH SCHEDULE

Ministry	List and Entry	Amendment suggested
1	2	3
UNION LIST		
Home Affairs	3. Preventive detention in the territory of India for reasons connected with defence, external affairs or the security of India.	In entry 3, substitute a semi-colon for the full-stop at the end of the entry and insert the following words thereafter : "persons subjected to such detention".
Law	7. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.	For entry 7, the following entry be substituted : "7. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas."
	26. Import and export across customs frontiers as defined by the Government of India.	For entry 26, the following entry be substituted : "26. Import or export across customs frontiers; definition of customs frontiers".
	37. Carriage of passengers and goods by air or by sea.	In entry 37, for the words "by air or by sea" the words "by railway, by sea, or by air" be substituted.
	38. Union railways; the regulation of all railways other than minor railways in respect of the safety, maximum and minimum rates and fares, station and service terminal charges, inter-change of traffic and responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.	For entry 38, the following be substituted : "38. Railways". [See also amendment suggested to entry 19 of State List.]

Education	39.	The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.	For entry 39, the following entry be substituted : "39. The National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the Government of India wholly or in part and declared by or under the law made by Parliament to be an institution of national importance."
	40.	The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.	For entry 40, the following entry be substituted : "40. The Benares Hindu University, the Aligarh Muslim University and the Delhi University and any other University declared by or under law made by Parliament to be an institution of national importance."
			After entry 40, the following entry be inserted : "40A. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance."
Home Affairs	41.	The Survey of India, the Geological, Botanical and Zoological Surveys of India; Union Meteorological organizations.	In entry 41, for the words "and Zoological" the words "Zoological and Anthropological" be substituted.
	52.	Constitution, organization, jurisdiction and powers of the Supreme Court and fees taken.	For entry 52, the following be substituted : "52. Constitution and organization of the Supreme Court and the High Courts; jurisdiction and powers of the Supreme Court and fees taken therein."
Labour	57.	Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.	In entry 57, for the words "professional or technical training," the words "professional, vocational or technical training" be substituted.
Education			After entry 57, the following entry be inserted : "57A. Supervisory control of post-secondary educational, scientific and technical institutions in so far such control by the Union is declared by Parliament by law to be necessary for the purpose of co-ordination and maintenance of standards."

Ministry	List and Entry	Amendment suggested
1	2	3
Home Affairs	58. Union Public Services and Union Public Service Commission.	For entry 58, the following be substituted : "58. Union Public Services; All-India Services; Union Public Service Commission."
Education	60. Ancient and Historical Monuments declared by Parliament by law to be of national importance; archaeological sites and remains.	In entry 60, after the word "Monuments", the words "and Records" be inserted.
Agriculture and Law	61. Establishment of standards of weight and measure	For entry 61, the following be substituted : "61. Establishment of standards of quality for goods manufactured or produced in India."
Works, Mines and Power	63. Petroleum and other liquids and substances declared by Parliament by law to be dangerously inflammable, so far as regards possession, storage and transport.	For entry 63, the following be substituted : "63. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."
Industry and Supply	64. Development of industries where development under the control of the Union is declared by Parliament by law to be expedient in the public interest.	For entry 64, the following entry be substituted : "64. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."
		After entry 64, the following new entry be inserted : "64A. Trade and commerce in, and the production, supply and distribution of—
		(a) the products of industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest; and
		(b) any other goods the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

Works, Mines and Power

66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

In entry 66, the words "the oilfields" be deleted.

74. The development of inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power.

For entry 74, the following be substituted :
 "74. The regulation and development of inter-State rivers and river valleys to the extent to which such regulation or development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Finance

83. Terminal taxes on goods or passengers, carried by railway or air; taxes on railway fares and freights.

In entry 83, after the word "railway", a comma and the word "sea" be inserted.

Law

86. Duties of excise on tobacco and other goods manufactured or produced in India except—

In entry 86—
 (i) in sub-paragraph (b), the words "non-narcotic drugs" be omitted;
 (ii) after sub-paragraph (b) the following sub-paragraph be inserted :
 "(c) non-narcotic drugs;"

- (a) alcoholic liquors for human consumption;
 (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs; but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

Home Affairs

1. Public order (but not including the use of naval, military or air forces in aid of the civil power); preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

In entry 1, the following words be deleted :
 "preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention."

2. The administration of justice; constitution and organization of all courts, except the Supreme Court, and fees taken therein.

For entry 2, the following be substituted :
 "2. The administration of justice; constitution and organization of all courts, except the Supreme Court and High Courts; fees taken in all the courts except the Supreme Court."

STATE LIST

Ministry	List and Entry	Amendment suggested
1	2	3
Health and Home Affairs	15. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.	For entry 15, the following be substituted : "15. Hospitals and dispensaries." and insert the following new entry in the <i>Concurrent List</i> (List III) : "Public health and sanitation; vital statistics including registration of births and deaths."
Labour	18. Education including Universities other than those specified in entry 40 of List I.	Add the following at the end of entry 18 : "subject to the provisions of entry 57 of List I and entry 17A of List III."
Law	19. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.	In entry 19, delete the words "minor railways subject to the provisions of List I with respect to such railways." [Consequent to the amendment proposed above, the definitions in clauses (s), (t) and (u) of article 303(1) would become unnecessary.]
Agriculture	27. Forests.	Entry 27 be deleted.
	29. Fisheries.	Entry 29 be deleted.
Health	38. Adulteration of foodstuffs and other goods.	Transfer entry 38 to Concurrent List.
Agriculture and Law	39. Weights and measures except establishment of standards.	Entry 39 be omitted.
Law	52. Duties of excise on the following goods manufactured or produced in the State and counter-vailing duties at the same or lower rates on similar	In entry 52— (i) in sub-paragraph (b) the words "non-narcotic drugs" be omitted.

goods manufactured or produced elsewhere in the territory of India :—
 (a) alcoholic liquors for human consumption;
 (b) opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs; but not including medical and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

(ii) after sub-paragraph (b) the following sub-paragraph be inserted :
 “(c) non-narcotic drugs”;

CONCURRENT LIST

Home Affairs	2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.	After entry 2, the following entry be added : “2A. Preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.”
Home Affairs	3. Removal of prisoners and accused persons from one State to another State.	For entry 3, the following be substituted : “3. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons connected with the maintenance of public order.”
Labour	..	Add the following new entry after entry 17 : “17A. Vocational and technical training of labour.”
Agriculture and Law	..	After entry 20, the following entry be inserted : “20A. Weights and measures.”
Agriculture	..	After entry 31, the following entries be inserted : (1) “31A. Forests.” (2) “31B. Fishing and fisheries in inland and territorial waters.”
Information and Broadcasting	32. The sanctioning of cinematograph films for exhibition.	Transfer entry 32 to the Union List.

Ministry	List and Entry	Amendment suggested
1	2	3
Home Affairs	33. Persons subjected to preventive detention under the authority of the Union.	Delete.
Health	34. Economic and social planning.	For entry 34, the following be substituted : "34. Educational, Health, Economic and Social Planning."
Agriculture	..	After entry 34, the following entry be inserted : "34A. Development and regulation of mineral water-springs or spas." After entry 35, the following entry be inserted : "35A. Regulation of prices of agricultural produce."

(B) AMENDMENTS TO THE FINANCIAL PROVISIONS IN PART X OF THE DRAFT
CONSTITUTION

BY THE DRAFTING COMMITTEE

That in Chapter I of Part X, for the sub-heading "Distribution of Revenues between the Union and the States" the sub-heading "General" be substituted.

Articles 248 and 248-A : That for article 248, the following articles be substituted :

248. No tax shall be levied or collected except by authority of law.

248-A. (1) Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one Consolidated Fund to be entitled 'the Consolidated Fund of India', and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled 'the Consolidated Fund of the State'.

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

Article 249 : That for article 249, the following sub-heading be inserted :

Distribution of Revenues between the Union and the States.

That in clause (2) of article 249, the words "in that year" be deleted.

Article 253 : That clause (1) of article 253 be deleted.

That in clause (2) of article 253, for the words "Union duties of excise" the words "Export duties and Union duties of excise" be substituted.

Article 256 : That for clause (1) of article 256, the following clause be substituted :

(1) Notwithstanding anything in article 217 of this Constitution no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein, in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

Article 257 : That the words "by law" be added at the end of article 257.

Article 258 : That in clause (2) of article 258, for the words "ten years" the words "fifteen years" be substituted.

Article 260 : That the following be substituted for clause (1) of article 260 :

(1) The President shall, as soon as practicable but not later than the expiration of five years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall

consist of a Chairman and four other members to be appointed by the President.

Article 261 : That in article 261, for the word "Parliament" the words "each House of Parliament" be substituted.

Article 262 : That in the marginal heading to article 262, for the words "the revenues of India" the words "Indian revenues" be substituted.

Article 263 : That for article 263, the following be substituted :

263. (1) The custody of the Consolidated Fund of India, the payments of moneys into such Fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by Parliament, and until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State, the payments of moneys into such Fund and the withdrawal of moneys therefrom, and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by the Legislature of the State, and until provision in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.

Article 269 : That in clause (2) of article 269, for the words "if any, as it may think fit, to impose" the words "as may be laid down by or under any law made by Parliament" be substituted.

BY H. N. KUNZRU

Article 248-A : *That in the amendment proposed by the Drafting Committee in clause (1) of new article 248-A, after the words "Subject to the provisions of" the words, figures and letter "article 248-B of this Constitution and to the provisions of" be inserted.

New article 248-B : That in the amendment proposed by the Drafting Committee above, after the new article 248-A, the following new article 248-B be added :

248-B. (1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled 'the Contingency Fund of India' into which shall be paid from time to time such sums as may be determined by such law and the said fund shall be placed at the disposal of the President to be advanced by him for the purposes of meeting unforeseen expenditure which has not been authorized by Parliament pending authorization of such expenditure by Parliament by law under article 95 or article 96 of this Constitution.

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled 'the Contingency Fund of the State' into which shall be paid from time to time such sums as may be

*The Drafting Committee proposes to accept the amendments of H. N. Kunzru.

determined by such law and the said Fund shall be placed at the disposal of the Governor to be advanced by him for the purposes of meeting unforeseen expenditure which has not been authorized by the Legislature of the State pending authorization of such expenditure by the Legislature of a State under article 180 or 181 of this Constitution.

Article 263 : That in the amendment proposed by the Drafting Committee on article 263, after the words "Consolidated Fund", wherever they occur, the words "and the Contingency Fund" be inserted; and for the words "such Fund" wherever they occur, the words "such Funds" be substituted.

[*Note* : Commenting on some of the above amendments, the Finance Minister, in the letter to the Chairman of the Drafting Committee dated June 6, 1949, observed :

I have now discussed the amendments proposed to...articles 248, 248A, 248B, 249 and 263 of the Draft Constitution and the corresponding amendments proposed to the States section, with the Draftsman of the Constituent Assembly. I have indicated to him the necessity of examining the implications of Pandit Kunzru's amendments regarding the setting up of a Contingency Fund and the desirability, if possible, of leaving it to Parliament to set up by Acts all Funds...Further, he has been apprised of the Cabinet decision to add a new sub-clause to article 263 so as to make it clear that suitors' moneys held in deposit by courts are included in the public account. My Ministry is writing separately requesting him to place the Cabinet decision before the Drafting Committee so that they could themselves move the necessary amendments to article 263. I presume this will have your approval...]

(C) NOTE BY THE CENTRAL MINISTRY OF FINANCE ON CERTAIN FINANCIAL PROVISIONS OF THE DRAFT CONSTITUTION

Articles 210 and 211 : These articles relate to the appointment of Auditors-in-Chief for the States and follow the provisions of section 167 of the Government of India Act, 1935. In spite of the fact that this provision has been in force for over 12 years no Province has so far decided to appoint an Auditor General (Auditor-in-Chief) of its own for the obvious reason that this would have the effect of transferring the liability for the expenditure on the Auditor-General and his staff from the Central to the Provincial revenues without bringing any appreciable advantage to the Provincial Government concerned. Further, the existing procedure of making the Auditor General of India responsible for the audit and accounting of both Central and Provincial transactions has worked fairly smoothly and is the only effective method of enforcing a uniform pattern of audit and accounting throughout the country. Finance Ministry are, therefore, of the view that the repetition of this provision in the new Constitution is unnecessary.

Articles 248-A and 248-B : Attention may be invited to the comments

conveyed to the Chairman, Drafting Committee in the Finance Minister's letter dated the 6th June, 1949 (*See Document supra*).

Article 250(1): Finance Ministry consider that taxes on railway fares and freights should be, as recommended by the Sarkar Committee, allocated to the Centre and not to the units. In view of the fact that Railways in India are owned by the Central Government it is difficult to distinguish these taxes from the surcharge on fares and freights and it will be appropriate for the Centre to retain them. There are also likely to be difficulties in securing an equitable distribution of this tax among the units. Both on grounds of equity and administrative convenience this tax should, therefore, be left to the Union. Sub-clause (d) should therefore be deleted from this clause.

Article 251: This article deals with the collection and distribution of income-tax and has attracted a spate of amendments seeking mainly to prescribe 60% or more of the net proceeds of income-tax, being the amount to be made available for distribution amongst the units. In view, however, of the fact that article 260 of the Draft Constitution provides for the appointment of a Finance Commission for examining the distribution of the net proceeds of taxes which are to be allocated to the various units and the principles on which this allocation is to be made, it does not seem appropriate to fetter the discretion of the Commission by fixing a fixed percentage of the net proceeds of income-tax as the amount available for distribution.

A few amendments suggest the inclusion of corporation tax in the definition of the term 'income-tax' for purposes of distribution of its net proceeds amongst the States. This would cut a large slice off the Central revenues and cannot, therefore, be agreed to in anticipation of the detailed examination by the Finance Commission.

The attempt made in certain amendments to include Chief Commissioners' Provinces for purposes of distribution of the net proceeds of income-tax is not understood. As the entire expenditure on the Chief Commissioner's Provinces is met from the revenues of the Government of India, there could not be any question of allocating a part of the income-tax proceeds to these Provinces.

To summarise, this article should remain as it is.

Article 252: This article aims at reproducing the provisions in the proviso to section 137 and proviso (b) to section 138(1) of the Government of India Act, 1935. It is necessary for the Centre to retain this power of surcharge, but no limit of 25% or less to this surcharge as has been suggested by the two amendments moved to this article should be imposed. The extent of this surcharge depends upon the needs of the moment and can, therefore, be left to be determined by Parliament in the usual course.

Article 253(1): Finance Ministry support the majority view of the

Drafting Committee that there need be no constitutional embargo on the imposition of tax on salt or on any other commodity and that its levy should be left to the discretion of Parliament. This clause should therefore be omitted.

Article 253(2): Finance Ministry welcome the omission of "export duties" from this article. The attempt made in certain amendments to fix a specified percentage of excise duties to be made over to the units should be resisted. This question can be left to be determined by Acts of Parliament, subject to such recommendations as the proposed Finance Commission would make in the matter.

Article 254: As article 253 does not contain any reference to export duties the words "Notwithstanding anything in article 253 of this Constitution" appearing at the beginning of this article are unnecessary and may be omitted.

Finance Ministry are not in favour of continuing in the new Constitution any provision for the sharing of jute export duty with the jute growing Provinces. This has been an embarrassing precedent and has for some time led to a consistent demand from Provinces like Assam and Madras for the sharing of export duty on tea. Retention of this provision is also contradictory to the omission of 'export duties' from article 253(2). Finance Ministry, therefore, share the recommendation of the Sarkar Committee that the provision should not be repeated in the new Constitution but some provision may be made for compensating the Provinces now sharing in the duty for a specified period.

Article 255: The provisos to this article are new additions and make it mandatory to sanction grants for expenditure on Scheduled Tribes and in the case of Assam for expenditure on tribal areas. This has also led to an amendment for paying grants-in-aid to East Punjab for purposes of rehabilitation and granting relief to displaced persons settled in that Province. Finance Ministry consider that the scope of the main article corresponding to section 142 of the Government of India Act, 1935, is wide enough and that without making a constitutional provision for the Scheduled Tribes, tribal areas or displaced persons, the matter can be left to be prescribed by Parliament on the basis of the recommendations of an impartial authority like the Finance Commission for determining the need and the extent of the assistance required by the various States.

Article 256: This article follows section 142-A of the Government of India Act, 1935, but includes also the recommendations of the Sarkar Committee that the maximum limit of a professional or employment tax should be raised from Rs. 50 to Rs. 250. Drafting Committee's amendment seeks to restore to clause (1) of this article almost the exact wordings of the similar provision in the Government of India Act. It is for consideration whether the increase in the limit is justifiable under present circumstances.

Article 258: This is a new article and provides for bilateral agreements

with acceding States for the levy and collection of taxes falling within the Union field and the allocation of the proceeds of such taxes. In an amendment sponsored by the Drafting Committee the limit of 10 years provided in the draft article for the life of the agreements is proposed to be increased to 15 years.

*New article 258-A, proposed under amendment No. *2938:* This amendment seeks to provide for the levy and collection by the Government of India of any taxes, duties, cesses or fees not specifically mentioned in either of the three lists of the Seventh Schedule and for the allocation of the whole or such percentage of the net proceeds of such duties to the States. This would thus have the effect of taking away from the Union the residuary powers of legislation for raising revenues for the purposes of the Union and would, therefore, be in conflict with item No. 91 of the Union List. Finance Ministry consider that the residuary powers should, as already provided for, vest in the Centre.

Article 259: This article follows section 144 of the Government of India Act, 1935, but omits the unnecessary reference to contribution, if any, made to the revenues of the Dominion by any State.

Article 260: As originally anticipated most of the amendments to this article seek to establish the proposed Finance Commission soon after the commencement of the Constitution. We may welcome this move as some arrangement seems necessary for having an agreed allocation of income-tax, jute export duty (if the provision regarding allocation is ultimately retained), the fixation of subventions to deficit Provinces or the determination of special grants-in-aid for backward and tribal areas as early as possible. Cabinet has already approved the proposal of the Finance Ministry to take immediate steps to provide for an enquiry to determine the allocation of income-tax and jute export duty to the various Provinces and if the Finance Commission could be appointed immediately the necessity for an *ad hoc* enquiry will be obviated. The Provincial Governments are not likely to accept the maintenance of *status quo* over the first five years; nor would it be fair to expect them to do so.

*Notice of this amendment was given by Prabhu Dayal Himatsingka, S. K. Patil and Upendra Nath Barman. New article 258-A proposed by them read:

258-A. Any taxes, duties, cesses or fees which are not specifically mentioned in Lists I, II and III of the Seventh Schedule to this Constitution shall be levied and collected by the Government of India, but the whole or such percentage, as may be prescribed, of the net proceeds in any financial year of any such taxes, duties, cesses or fees shall be assigned to the States within which the taxes, duties, cesses, or fees are leviable in that year and shall be distributed among those States in such manner as may be prescribed.

Amendment No. 2942 proposed by Shri T. T. Krishnamachari* has a far-reaching effect and authorizes the Commission to recommend changes in the financial provisions of the Constitution and the Lists attached to Schedule VII in so far as they pertain to the financial powers of the Union and the State Governments. At the same time, by prescribing that constitutional amendments based on these recommendations may be carried out by a simple majority vote of both the Houses of Parliament, it relaxes the rigorous procedure laid down in draft article 304 that amendments to the Constitution would require a majority of the total membership of each House and also a majority of not less than two-thirds of the members present and voting. Further, amendments seeking to make any change in the lists in the Seventh Schedule also require to be ratified by the Legislatures of not less than half of the States in Part I and of not less than one-third of the States in Part III of the First Schedule. Finance Ministry feel that any move which seeks to relax the procedure for constitutional amendments, particularly those relating to financial provisions and the allocation of resources enumerated in the three Lists in the Seventh Schedule, would not be a step in the right direction.

Article 262 : Section 150(1) of the Government of India Act, 1935, provides that no burden shall be imposed on the revenues of the Dominion or the Provinces except for purposes of the Dominion or some part of the Dominion. The draft article removes this embargo and empowers the Union or the States to make any grants for any *public* purpose. This is a necessary and a desirable change.

Article 263 : This article as amended by the Drafting Committee finally follows section 151(1) of the Government of India Act, 1935, regarding the procedure for the custody etc., of public moneys, with the exception that the provision which has hitherto been made under rules framed by the Governor-General or the Governor is sought to be regulated in the new Constitution by law made by Parliament.

Attention is also invited to the Cabinet decision to add a new sub-clause to this article so as to make it clear that "suits' moneys" held in deposit by courts are included in the public account. Separate action has been

*The amendment proposed the setting up of a Finance Commission the functions of which would be generally to review the tax structure of the Union and State Governments and recommend such changes as might be considered necessary in the financial provisions of the Constitution and the distribution of the taxation powers in the Seventh Schedule. It was suggested in the amendment that, while Parliament would have power to reject any proposal of the Finance Commission, it would have no power to vary any such proposal in substance; also that, if these proposals were approved by a simple majority of both Houses of Parliament, they would be incorporated as amendments to the Constitution as if they were amendments to the Constitution made under the provisions of article 304.

taken to bring this to the Draftsman's notice.*

Article 264 : Amendment No. 2952 proposed by the Drafting Committee enlarges the scope of the word 'property' so as to include any article, commodity or goods produced or manufactured by any agency employed by the Government of India or by any corporation constituted by law by Parliament. Finance Ministry support this amplification.

Article 266 : A detailed note on this article has already been sent to the Chairman of the Drafting Committee in December last. Finance Ministry would suggest a redraft of this article on the following lines :

266. (1) Where a trade or business undertaking of any kind is carried on by or on behalf of the Government of a State, that Government shall in respect of each such trade or business undertaking and all operations connected therewith, all property occupied, and all goods owned for the purposes thereof or any income arising in connection therewith, be liable to Union taxation in the same manner and to the same extent as in the like case a company would be liable, provided that the liability of the Government of the State shall be determined with reference to each such trade or business undertaking separately, without reference to other trades and business undertakings carried on by the State.

Explanation (1) : For the purposes of this article, any operation incidental to the ordinary functions of the Government of a State, such as the sale of the forest produce of any forest under the control of the Government (without applying thereto any process other than that ordinarily employed by the owner of a forest) or of any article produced in any jail within a State, shall not be deemed to be a trade or business carried on by or on behalf of the Government of the State.

Explanation (2) : Operations connected with the following shall not be held to be incidental to the ordinary functions of the Government of a State, namely :

- (1) hydro-electric and irrigation undertakings;
- (2) electric supply undertakings ;
- (3) harbours and docks at minor ports ;
- (4) gas supply or water supply undertakings ;
- (5) markets, fairs, fisheries, manufacture of shark liver oil, etc.;
- (6) transport undertakings, minor railways, ferries, inland river navigation (other than on national waterways) ;
- (7) manufacture and sale of medicines, sera, vaccines ;
- (8) urban and rural house-building undertakings ;
- (9) manufacture and sale of prefabricated houses and building materials;
- (10) mining, steel works, cement factories, fertilizer factories, textile mills, oil mills, flour mills, rice mills, soap factories, and similar industrial undertakings;

*This was introduced and passed as article 263A on Sept. 9, 1949 (it is now article 284).

- (11) wholesale and retail marketing of agricultural produce, textiles, etc.;
- (12) saw mills and furniture-making for the better utilisation of marketing of forest timber;
- (13) money-lending, *taccavi* loans, house-building loans;
- (14) newspapers other than State gazette;
- (15) distilleries, race courses, theatres, cinemas, hotels.

(2) Save as hereinbefore provided, the Government of a State shall not be liable to Union taxation in respect of lands or buildings situate within the territory of India, or income accruing, arising or received within such territory :

Provided that nothing in this clause shall exempt the Ruler of any State for the time being specified in Part III of the First Schedule from any Union tax in respect of lands, buildings or income, being his personal property or personal income.

Articles 268 and 269 : The Expert Committee suggested that a specific provision should be made in the Constitution to secure that without the concurrence of the Centre units do not borrow outside the country. It may be held that this position follows from item 18 in the Union List. It is presumed that the Drafting Committee had considered this point and were satisfied that specific provision in the Constitution to this effect is not necessary.

Amendment No. 2971* to article 269 would make it necessary for the Government to get the approval of Parliament for sanctioning loans to States in each case. This would, by itself, be an impossible task, for loans are sanctioned on numerous occasions, at short notice and for reasons which it may not be in the public interest to divulge. Finance Ministry would, therefore, oppose this move. There is, however, no objection to amendment No. 2972† suggested by the Drafting Committee that the loans may be sanctioned by the Government of India "subject to such conditions as may be laid down by or under any law made by Parliament".

(D) NOTE BY THE CENTRAL MINISTRY OF FINANCE ON BORROWING BY THE CENTRAL AND PROVINCIAL GOVERNMENTS

The Government of India resorts to borrowing either for financing capital

*The amendment was proposed by K. Santhanam, M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and T. T. Krishnamachari. Article 269(2) as amended read:

- (2) The Government of India may, with the approval of Parliament and subject to such conditions, if any, as it may think fit to impose, make loans to States for the time being specified in Part I or Part III of the First Schedule or, so long as any limits fixed under the last preceding article are not exceeded, give guarantees in respect of loans raised by any such State and any sums required for the purpose of making such loans shall be charged on the revenues of India.

†Notice of Amendments, Vol. II, November 1948 (Not reproduced).

expenditure, or for meeting unremunerative expenditure involving large outlay, or for covering revenue deficits in times of difficulty and stress. Loans are also floated with the object of reducing the interest liability of the Government, or for mopping up surplus purchasing power in the hands of the community, as an anti-inflationary measure.

Borrowing powers of the Government of India: The Government of India Act, 1935, as originally enacted, abolished the power of the Secretary of State to borrow on the security of the revenues of India though he retained the right to contract sterling loans on behalf of the Governor-General in Council during the operation of transitional provisions and before the inauguration of the Federation. The power to borrow in India upon the security of the revenues of India accordingly devolved upon the Governor General in Council with effect from April 1937. This position continued up to the date of the transfer of power. Under section 162 of the Government of India Act, 1935, as adapted, the executive authority of the Dominion extends to borrowing upon the security of the revenues of the Dominion within such limits, if any, as may be fixed by Act of the Dominion Legislature and the giving of guarantees within such limits, if any, as may be so fixed. As no Act has so far been passed by the Legislature, fixing the limits within which the Centre can borrow or give guarantees, the Government of India now enjoy full powers to raise loans in, or outside, India.

Debt position of the Government of India: The outstanding public debt of the Government of India is expected to amount to Rs. 2,030 crores at the end of the year 1948-49 and Rs. 2,049 crores at the end of 1949-50. A broad analysis of the debt compared with the outstanding debt at the end of 1938-39 is given below :

(In lakhs of rupees)				
	As on 31st March 1939	As on 31st March 1947	As on 31st March 1949	As on 31st March 1950
<i>India</i>				
Loans	437,87	1,526,56	1,478,39	1,496,75
Treasury Bills and Ways and Means Advances	46,30	77,59	369,33	369,33
Treasury Deposit Receipts . . . . .	..	..	4,00	9,00
Special Floating Loans . . . . .	..	126,96	133,58	133,58
Interest-free Loans . . . . .	..	5,59	..	..
Expired Loans	65	9,44	5,44	3,23
TOTAL	484,82	1,746,14	1,990,74	2,011,89
<i>England</i>				
Loans	396,50	12,30	3,39	2,87
War Contribution	20,62	20,62	20,62	20,62
Capital portion of Railway Annuities	47,82	22,44	15,53	13,29
Expired Loans	1	13	5	3
TOTAL	464,95	55,49	39,59	36,81
GRAND TOTAL	949,77	1,801,63	2,030,33	2,048,70

The liability for the British War Loan included in the above statement remains suspended while against the outstanding Railway annuities an equivalent deposit has been made with the Government of the United Kingdom who have undertaken to provide the necessary sterling as the payments fall due. Omitting these items the total outstanding debt will be Rs. 1,994 crores at the end of the year 1948-49 and Rs. 2,015 crores at the end of 1949-50 representing at the end of the budget year an increase of Rs. 1,086 crores over the corresponding figure in the last pre-war year.

A part of this increase (Rs. 95 crores) is reflected in the Government's cash balances and investments which are expected to amount to Rs. 125 crores on the 31st March, 1950 as compared with Rs. 30 crores on the 31st March, 1939. The balance can be considered to have been utilized towards meeting the revenue deficits of the war and post-war years and the capital expenditure. During the post-partition period ending the 31st March, 1949, new loans floated amounted to Rs. 96 crores and permanent debt to the extent of Rs. 154 crores was discharged. Current year's budget provides for the raising of a new loan of Rs. 85 crores, and the repayment of Rs. 67 crores outstanding against the 3% Loan 1949-52 due for discharge on 1st August, 1949.

Borrowing by Provinces: The Chairman of the Drafting Committee has not asked for any information in regard to borrowing by Provinces. But as draft articles 268 and 269 of the new Constitution cover borrowing not only by the Centre but also by the units, the powers of the Provinces to borrow in the open market under the various constitutional provisions from time to time and the extent of the public debt outstanding against them are also indicated below :

(1) Prior to Montagu-Chelmsford Reforms, Provincial Governments had no power to borrow at all in the open market. Under the Local Government (Borrowing) Rules, framed under the Government of India Act, 1919, the Provincial Governments were given restricted powers to borrow but the purposes for which loans could be raised were specified and the approval of the Government of India was necessary in each case. Under the provisions of the Government of India Act, 1935 which continue almost unaltered after the transfer of power, Provinces have no power to borrow outside India without the consent of the Centre but they are free to borrow in India for any purpose they like if they are not indebted to the Central Government. As several Provinces are so indebted, there is a statutory obligation under section 163(3) to obtain the consent of the Central Government. The consent has to be granted subject to such conditions as the Central Government may think fit to impose but cannot unreasonably be withheld. It will thus be observed that provisions in the Government of India Act were a compromise solution and the extremist view of giving complete autonomy to the Provinces to borrow in the open market was

modified to a considerable extent. Unrestricted freedom to borrow in the open market would certainly have led to severe competition amongst different units for the limited amount of funds available for investment in the country. In actual practice, a close coordination is exercised in raising loans for and on behalf of the Provinces in the open market through the agency of the Reserve Bank.

(2) A statement showing the debt outstanding against the Provinces on 31st March, 1939 and on 31st March, 1947 is enclosed. It would be observed that during this period the total public debt outstanding against the Provinces of the undivided India increased by Rs. 15 crores only. Figures for the post-partition period are not yet available.

PUBLIC DEBT OUTSTANDING AGAINST PROVINCES

(Figures in lakhs of Rs.)

Name of the Provinces	As on 31st March, 1939				As on 31st March, 1947			
	Perma- nent Debt	Floating Debt	Loans from Central Govern- ment	Total	Perma- nent Debt	Floating Debt	Loans from Central Govern- ment	Total
Madras	3,15	..	7,44	10,59	15,65	..	4,28	19,93
Bombay	1	..	31,80	31,81	10,49	..	15,91	26,40
Bengal	..	..	..	..	..	8,51	4,07	12,58
United Provinces	5,62	..	25,19	30,81	15,11	..	14,78	29,89
Punjab.	5,18	..	26,60	31,78	19,09	..	12,44	31,53
Bihar	..	..	..	..	..	..	..	..
C. P. & Berar	50	1,10	3,25	4,85	2,73	..	2,16	4,89
Assam	..	40	..	40	50	1,00	..	1,50
N. W. F. P.	60	..	..	60	57	..	..	57
Sind	..	..	28,96	28,96	1,66	..	1,86	3,52
Coorg	..	..	4	4	..	..	..	..
Orissa	..	..	..	..	..	..	23,95	23,95
	15,06	1,50	1,23,28	1,39,84	65,80	9,51	79,45	1,54,76

(E) NEW ARTICLE 264-A REGARDING TAXES ON SALE OR PURCHASE OF GOODS
PROPOSED BY THE CENTRAL MINISTRY OF FINANCE

I. After article 264 the following article be inserted :

264-A. Restrictions regarding taxes on sale or purchase of goods: (1) No law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of goods where under the general law relating to sale of goods such sale or purchase—

(a) takes place outside the State; or

(b) takes place in the course of the import of the goods into the territory of India; or

(c) is the last sale or purchase effected in India with a view to the export of the goods out of the territory of India; or

(d) takes place in the course of inter-State trade or commerce and either with a view to re-sale by the purchaser in the course of his business or with a view to use by the purchaser for the purpose of any manufacturing business or building contract carried on or undertaken by him.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of any such goods as may be declared by Parliament by law to be essential for the life of the community or for the purpose of the industrial or economic development of the Union

II. For entry 58 of List II of the Seventh Schedule the following entries be substituted :

58. Taxes on the sale or purchase of goods.

58-A. Taxes on advertisements.

(F) NEW ARTICLE 265-A REGARDING EXEMPTION FROM STATE TAXATION OF
WATER AND ELECTRICITY, STORED, GENERATED, CONSUMED, DISTRIBUTED OR
SOLD BY RIVER VALLEY AUTHORITIES PROPOSED BY THE CENTRAL MINISTRY
OF WORKS, MINES AND POWER

After article 265, the following article be inserted :

265-A. Exemption from taxation by States in respect of water or electricity, in the case of certain authorities: No law of a State shall impose or authorize the imposition of any tax in respect of any water or electricity stored or generated or consumed or distributed or sold by any authority established by Parliament by law for regulating or developing any inter-State river or river valley save in so far as Parliament may, by law, otherwise provide.

(III) MINUTES OF THE MEETINGS OF THE DRAFTING COMMITTEE
WITH THE PREMIERS
July 21-24, 1949

July 21, 1949

The Drafting Committee met the Premiers of the Provinces and of certain Indian States, the members of the Union Powers Committee and also certain Ministers of the Government of India on the 21st July, 1949, and discussed with them the various amendments suggested in the Seventh Schedule to the Draft Constitution.

SEVENTH SCHEDULE

The list of amendments proposed by the various Ministries of the Government of India was taken up for consideration. The results of the discussions are stated below :

UNION LIST

Entry 7 : The revised entry proposed for substitution for the existing entry by the Ministry of Law was generally accepted. The Premiers of Bombay and Central Provinces and Berar objected to the insertion of the reference to the control of rents in the revised entry but the Premier of East Punjab supported the retention of this reference.

Entry 26 : The new entry 26 proposed for substitution for this entry by the Ministry of Law was accepted.

Entry 37 : The amendment suggested in entry 37 by the Ministry of Law was accepted.

Entry 38 : The new entry proposed for the substitution for this entry by the Ministry of Law was accepted but it was suggested that the expression "railways" should be so defined so as to exclude "tramways and minor railways operated for the carriage of goods to and from factories".

Entry 39 : The new entry 39 proposed for substitution for this entry by the Education Ministry was accepted subject to the omission of the words "or under" therefrom.

Entry 40 : The new entry 40 proposed for substitution for this entry by the Education Ministry was also accepted subject to the omission of the words "or under" therefrom.

New entry 40-A : The new entry 40-A proposed for insertion after entry 40 by the Education Ministry was accepted.

Entry 41 : The amendment suggested by the Education Ministry in this entry was accepted.

Entry 57 : The amendment suggested in this entry by the Ministry of Labour was accepted.

New entry 57-A : It was suggested that the new entry 57-A proposed for substitution for this entry by the Ministry of Education should be revised as follows :

57-A. Co-ordination and maintenance of standards of higher educational, scientific and technical institutions.

Entry 60 : The amendment suggested by the Ministry of Education in this entry was accepted but it was suggested by the Premier of the United Provinces that the item "archaeological sites and remains" should be transferred from the Union List to the Concurrent List and this was agreed to. It was also agreed that the new entry 10-A with regard to "Ancient and historical monuments" should be inserted in the State List as proposed by the Drafting Committee :

10-A. Ancient and historical monuments, other than those specified in entry 60 of List I.

Entry 61 : It was suggested that the new entry proposed for substitution for this entry should be inserted as an additional entry 61-A and should not be substituted for the existing entry 61, and that the new entry to be so inserted should be revised as follows :

61-A. Establishment of standards of quality for goods to be exported across customs frontier or transported from one State to another.

Entry 63 : The new entry 63 proposed for substitution for this entry by the Ministry of Works, Mines and Power was accepted.

Entry 64 : The new entry 64 proposed for substitution for this entry by the Ministry of Industry and Supply was accepted.

New entry 64-A : It was agreed that the new entry 64-A proposed for insertion after entry 64 by the Ministry of Industry and Supply should be transferred to the Concurrent List subject to necessary drafting changes.

Entry 66 : The amendment suggested in this entry by the Ministry of Works, Mines and Power was accepted.

Entry 74 : The new entry 74 proposed for substitution for this entry by the Ministry of Works, Mines and Power was also accepted.

Entry 83 : The amendment suggested in this entry by the Ministry of Finance was agreed to.

STATE LIST

Entry 15 : The transfer to List III of the subject "public health and sanitation" was objected to by the Premiers of Bombay, the United Provinces, Assam, and Bihar. The transfer of "Vital statistics including registration of births and deaths" to List III was accepted.

Entry 18 : The form of the amendment proposed by the Ministry of Labour in this entry was left to be settled by the Drafting Committee.

Entry 19: The amendment proposed in this entry by the Ministry of Law is consequential on the amendment proposed in entry 38 of the Union List. Its form will depend on the manner in which the expression "railways" is defined.

Entries 27 and 29: The suggestion of the Ministry of Agriculture for amendment of these entries was not agreed to.

Entry 38: It was agreed that this entry should be revised as shown below and then transferred to the Concurrent List:

Adulteration of foodstuffs and drugs.

CONCURRENT LIST

Entry 17-A: The amendment of the Labour Ministry to insert this entry which was only consequential was accepted.

New entries 20-A, 31-A and 31-B: The amendments to insert these entries were considered unnecessary in view of the decisions already taken.

Entry 32: The transfer of this entry to the Union List was agreed to.

Entry 34: The amendment proposed by the Health Ministry in this entry was considered unnecessary.

New entries 34-A and 35-A: The insertion of these two new entries proposed by the Ministries of Health and Agriculture was not agreed to.

Entry 39: In view of the decision to retain entry 61 of List I without any alteration, the amendment proposed by the Ministry of Law for the omission of this entry from the State List was considered unnecessary.

The consideration of the amendments proposed in entry 86 of the Union List and entry 52 of the State List by the Ministry of Law was held over for being taken up along with the consideration of the amendments to entries relating to taxation in the Union and the State Lists.

The consideration of the amendment proposed by the Ministry of Health Affairs was postponed until the 23rd July.

The consideration of the amendment proposed by the Ministry of Health in entry 37 of the Concurrent List was also postponed.

July 22, 1949

The Drafting Committee met the Premiers and Finance Ministers of the Provinces and of certain Indian States and also certain Ministers of the Government of India at 10 A.M. on 22nd July, 1949 in the Constitution Hall and discussed with them the financial provisions in the Draft Constitution. The President of the Assembly and the Prime Minister were also present.

AUDITORS-IN-CHIEF FOR STATES

The committee first took into consideration articles 210 and 211 of the

Draft Constitution relating to Auditors-in-Chief for the States, and it was agreed that these provisions should be deleted.

FINANCIAL PROVISIONS

The provisions in Chapters I and II of Part X of the Draft Constitution were then considered article by article.

Article 247 : The suggestion of the Finance Minister of Bombay that a definition of "prescribed" should be inserted in this article was not agreed to as this word having been defined wherever it occurred a general definition was considered unnecessary.

Article 248 : The substitution of two new articles—one providing for authority for the imposition of any tax and the other defining Consolidated Funds of India and of the States—was agreed to.

The amendment proposed by Pandit H. N. Kunzru for the insertion of a new article 248-B providing for the establishment of Contingency Funds for India and for the States was also accepted. Some of the Premiers present doubted the necessity for such a provision. It was explained that the provision for the creation of a Contingency Fund had been proposed as it would enable the Executive to meet unforeseen expenditure pending the authorization of such expenditure by Parliament or the Legislature of the State by law. It was also pointed out that this was an enabling provision and it would be open to any State not to create such a fund if it did not consider it necessary to do so.

Article 249 : It was agreed that clause (1) of this article should be revised so as to insert the words "as are imposed under any law made by Parliament" after the words "Such stamp duties".

Article 250 : The question as to whether sub-clause (d) of clause (1) of article 250 relating to taxes on railway fares and freights should be deleted as proposed by the Ministry of Finance, Government of India, was considered at some length. The Premier of the United Provinces was not in favour of the deletion of this sub-clause as he thought that it would deprive the Provinces of a potential source of revenue. The Chairman of the Drafting Committee agreed to look into this matter further.

It was agreed that in sub-clause (c) of clause (1) of this article, after the word "railway" the word "sea" should be inserted.

Article 251 : Before taking up consideration of this article, the Chairman drew attention to certain amendments of which notice had been given by Shri T. T. Krishnamachari raising a fundamental issue as to whether a distinction should be made between income from agricultural land and income from other sources for the purposes of income-tax. This amendment did not find favour with any of the Provincial Ministers.

The consideration of article 251 was then taken up. A suggestion was made that provision should be inserted in the Constitution fixing a definite

percentage of the net proceeds of income tax to be distributed among the States. The Finance Minister of Madras desired that corporation tax should also be included in the divisible pool. Shri K. C. Neogy was opposed to both these suggestions. He said that it would be wrong to fix a definite proportion in the Constitution as it was intended that the proportion should be fixed after consultation with the Finance Commission to be set up at the expiration of five years from the date of commencement of the Constitution. He, however, added that the Government of India was contemplating to set up an authority immediately for the purpose of fixing the proportion in which the proceeds should be shared between the Centre and the Provinces without waiting for the first quinquennial period for the appointment of the Finance Commission. He further added that the corporation tax was never intended to be shared between the Centre and the Provinces under the Government of India Act, 1935, and that the existing position should be continued.

The Premier of West Bengal complained that the share of West Bengal in the net proceeds of income tax had been reduced during the last two years. The Premier of the United Provinces, however, was of opinion that the percentage to be distributed among the Provinces over which there was a good deal of controversy should not be specified in the Constitution. The Prime Minister said that it was desirable to have an Expert Committee to go into the whole question and that it should be appointed immediately. Shri K. C. Neogy pointed out that the integration of the Indian States had changed the position considerably and this also had to be examined thoroughly.

The Premier of the United Provinces agreed that a Commission of the kind proposed might be appointed but suggested that in the meantime the States should have fifty per cent of the income tax and also the corporation tax. He was of the opinion that it would not be possible for any Commission to report on the entire question of income tax distribution within a year or two and it might take about four or five years.

The Premier of Orissa suggested the setting apart of five per cent of the net proceeds of income tax by statutory provision for the formation of a development fund to be administered by the Centre for the general development of the country. The Chairman said that the suggestion would be noted.

The Premier of the Central Provinces and the Finance Minister of Madras complained that their Provinces too had not been fairly treated.

The Premier of East Punjab said that the distribution should not be on the basis of population but on the basis of the needs of the Provinces, and pleaded for special consideration for East Punjab.

The Chairman observed that the discussion could not carry them to any definite conclusion and that the Finance Ministry would take note of the suggestions made.

Article 252: This article was agreed to.

Article 253 : The Commerce Minister Shri K. C. Neogy suggested that clause (1) of this article should be deleted as there should be no embargo on the authority of Parliament to impose duties on salt.

The Prime Minister said that as the clause stood it had only meant that the country was being dumped with foreign salt, and he considered that there was no point in making this clause a part of the Constitution.

The question whether provision for the distribution of the proceeds of the export duties among the States by law should be included in clause (2) of this article was then taken into consideration.

Shri K. C. Neogy stated that the States should not have any share of the proceeds of the export duties and that no provision should be included in clause (2) of article 253 with regard to the distribution of export duties.

The Premier of the United Provinces and the Finance Minister of Madras wanted the continuance of the existing position under the Government of India Act, 1935, whereby export duties could be distributed among the Provinces by law.

The Premier of Assam desired that the export duties should be made available for distribution to the Provinces, particularly to those Provinces which produce the articles exported, such as tea.

Shri K. C. Neogy pointed out that this might be a legitimate consideration for giving grants-in-aid but this did not necessarily constitute a valid claim to a share in the export duty.

The Premier of Assam suggested that the words "if Parliament by law so provides" in clause (2) of article 253 should be replaced by an obligation on Parliament to provide for the distribution of the duties mentioned in that clause among the States. The Premier of West Bengal supported the suggestion of the Premier of Assam.

The Finance Minister of Madras suggested that tobacco should be deleted from the Central Excise Duties. The Chairman considered that the existing position should not be changed.

The Finance Minister of Assam wanted to know whether the question of sharing in the Excise Duty would also be referred to the Finance Commission. The Chairman thought that the Commission would examine the whole field of the obligation of the Centre, the obligation of the States and other resources.

The Chairman summing up the discussion on this article observed that the general consensus of opinion appeared to be in favour of the retention of article 253 omitting the provision relating to salt in clause (1) thereof.

Article 254 : The Chairman suggested that the provisions in this article should be replaced by a new article providing for compensatory grants to those Provinces which were sharing in the export duty. The Finance Minister of Assam proposed that compensatory grant should be also given in respect of tea. The Chairman explained that this article dealt with compensation for injury to vested rights and that there was no vested interest in the case

of tea. He further pointed out that the view of the Finance Ministry was that the system of dividing export duty was not sound.

Article 255 : The Premier of Assam suggested that the words "the rest of the areas of that State" in the first proviso to this article should be replaced by the words "the rest of the areas of India". This was not agreed to. It was however agreed that in sub-clause (a) of the second proviso to this article, for the words "three years" the words "two years" should be substituted.

Article 256 : Shri K. C. Neogy suggested that the limit of two hundred and fifty rupees prescribed in clause (2) of this article should be reduced to one hundred rupees. The Premier of the United Provinces suggested that the maximum limit should be two hundred and fifty rupees or in the alternative a tax assessable at a rate not exceeding one per cent of the income. Shri K. C. Neogy objected to this suggestion on the plea that it would amount to a second income tax. The Chairman pointed out that there existed nowhere in the world a system of taxation where the same common basis was shared between the Centre and the local authority though there might be some in which the State and the local authority shared the same common basis, and that he was therefore opposed to this proposal on principle.

Shri Alladi Krishnaswami Ayyar stated that, under the guise of taxes on professions, trades, callings, etc., some Provinces practically have a different sort of income tax machinery though the real object of the provision was to have a sort of licence fee or tax for practising certain professions or callings. He said that some of the people, especially in Madras, were taxed under this head to the tune of about a thousand rupees, and that it was desirable that there should be uniformity in this matter among all the Provinces.

The Premier of the United Provinces pressed that the maximum limit of two hundred and fifty rupees should not be reduced in any case.

The Premier of the Central Provinces and the Finance Minister of Madras supported the Premier of the United Provinces.

The Chairman said that he would examine whether the amount of two hundred and fifty rupees should be retained or the suggestion of the Finance Ministry to reduce the amount to one hundred rupees should be accepted.

Article 257 : This article was agreed to.

Article 258 : The consideration of this article was held over as the report of the States Finances Inquiry Committee was not ready.

Article 258-A : The Finance Minister of Bombay drew attention to an amendment proposed by Shri B. M. Gupte about the division of proceeds of residuary sources of taxes between the Union and States.* The Chairman said that the question would be examined.

Article 259 : This article was agreed to.

*This proposed that not less than 50% of these taxes should be assigned to the States in which they were levied.

Article 260 : The Chairman drew attention to an amendment of which notice had been given by the Drafting Committee seeking to substitute a new clause for clause (1) of the existing article. He pointed out that the only difference between the existing clause and the new clause was that under the existing clause the Finance Commission was to be appointed at the expiration of five years from the commencement of the Constitution, while under the new clause proposed it was to be appointed as soon as practicable but not later than the expiration of five years from the commencement of the Constitution.

The Premier of Orissa wanted to know if the Finance Commission would be a permanent body. The Chairman pointed out that it depended upon the amount of work the Commission would have.

Shri K. C. Neogy pointed out that the article as drafted would require the appointment to be made afresh every fifth year. The Premier of the United Provinces stated that the article did not contemplate continuity and that a Commission would be dissolved after it had completed its work. The Premier of Orissa pointed out that in Australia the Commission was a permanent body and that, if the idea was to have that kind of Commission, the Finance Commission should be a permanent body and one of its functions should be to examine all applications for grants from the States. The Premier of the United Provinces thought that the idea of asking the Commission to examine every suggestion or request for assistance might lead to embarrassing complications. The Chairman pointed out that he was not prepared to commit himself to a permanent body. He however pointed out that the only question to be considered was whether the language of clause (1) of this article would permit the appointment of a permanent body or an *ad hoc* body.

Article 261 : The Premier of the United Provinces stated that under this article as it had been drafted, the recommendations of the Finance Commission would not be published till the President had taken action on them and that they would not be discussed in Parliament. The Chairman pointed out that the action taken by the President might be modified by Parliament and that the power of Parliament to compel the Government to alter the action taken was inherent.

Article 262 : The Chairman pointed out that this article embodied only the existing provision in section 150 of the Government of India Act, 1935. The article was agreed to.

Article 263 : The Chairman stated that the article embodied the provision now contained in section 151 of the Government of India Act, 1935. He also stated that the article would be suitably amended so as to provide for the payment into the Consolidated Fund of suitors' moneys and similar deposits.

Articles 264, 264-A, 265, 265-A and 266 : The consideration of these articles was postponed to the 24th July when Dr. John Matthai,

Finance Minister, was expected to participate in the deliberations on his return from the United Kingdom.

Article 267 : The Chairman pointed out that this article was the same as section 156 of the Government of India Act, 1935, and it was agreed to.

Article 268 : This article was also agreed to.

Article 269 : A question was raised by Shri K. C. Neogy as to whether a State could borrow from outside India without the consent of the Government of India. The Chairman said that it could not.

Shri T. T. Krishnamachari said that it might in some cases be possible for a Province to offer better terms for raising loans from abroad than for the Centre and so it might be desirable to provide something on the lines of section 163(3) of the Government of India Act, 1935.

The Prime Minister said that it was highly desirable to allow Provinces to borrow directly from abroad but with the consent of the Centre. The Premier of the Central Provinces inquired what would happen if the Centre refused to give the consent. The Premier of East Punjab felt that the Centre would always be in a better position to borrow from outside than any State and that the borrowing of money by a State from outside might affect the foreign policy of the whole country.

The Chairman said that under the Government of India Act, 1935, it was permissible for the Provincial Governments to borrow from outside India, provided the Dominion consented. Under the new Constitution, it was proposed not to leave the situation as it was under that Act and accordingly an entry "foreign loans" had been inserted in the Union List, *vide* entry 18, and he thought that it would be competent for Parliament while exercising power under this entry to make provision that a State could borrow outside India only with the consent of the Union.

It was agreed that if there was any difference of opinion between the Union and the States, the opinion of the Union should prevail and there should be no provision for arbitration.

It was also agreed that the conditions to be imposed under clause (2) of this article should be imposed by or under any law made by Parliament and that suitable modifications should be made in that clause for the purpose.

The Premier of Orissa drew attention to section 141 of the Government of India Act, 1935, and suggested that provision similar to that contained in that section should be included in the Draft Constitution. The Premier of the United Provinces agreed that there should be such a provision. The Chairman undertook to examine this suggestion.

TAXATION ENTRIES IN LEGISLATIVE LISTS

The consideration of the entries relating to taxes in the Union List and in the State List was then taken up.

UNION LIST

Shri K. C. Neogy suggested that the mention of non-narcotic drugs should be omitted both from entry 86 of the Union List and entry 52 of the State List, the intention being that in so far as excise duties were leviable in the case of pharmaceutical preparations these duties should be levied by Central legislation, but under article 249 the proceeds of such duties would be made over to the Provinces. He stated that in the interest of the pharmaceutical industry uniform excise duty should be leviable throughout the States and for this purpose it was desirable that the Centre should be authorized to levy the duty.

The Premier of the United Provinces wished that both these entries should be left unaltered as they gave power to the Centre to levy excise duty on medicinal preparations containing narcotic drugs. Shri K. C. Neogy pointed out that there might be cases of non-narcotic drugs other than medicinal preparations and he did not want the States to impose excise duty on non-narcotic drugs and that was why he wanted the omission of the words "non-narcotic drugs" from entry 86 of the Union List and entry 52 of the State List. He said that the term "non-narcotic drugs" went far beyond medicinal preparations.

The Constitutional Adviser suggested that there was some ambiguity in the existing entries in question. He said that it was difficult to define non-narcotic drugs. He pointed out that aspirin was composed of three or four chemical substances each of which could be regarded as a non-narcotic drug, but on the other hand aspirin could be regarded also as a non-narcotic drug compounded of three or four other non-narcotic drugs, and that the question would then arise as to whether aspirin would come under non-narcotic drug as mentioned in paragraph (b) of entry 86 of the Union List or it would come under medicinal preparations. He suggested that either non-narcotic drugs should be omitted from both these entries or "non-narcotic drugs" should be placed in a separate paragraph (c) in both these entries, and that in the latter case, medicinal preparations referred to in the entries would be limited to medicinal preparations containing alcohol and any substance included in paragraph (b).

Shri K. C. Neogy suggested that "non-narcotic drugs" should be dropped from both the entries. But the Premier of the United Provinces was doubtful if the omission proposed would not create further difficulties. He was however willing to leave the decision to the Drafting Committee.

Shri K. C. Neogy raised the question of amendment of entry 20 of the Concurrent List by the substitution of the words "drugs including poisons" for the words "poisons and dangerous drugs" in that entry. The Chairman pointed out that this suggestion would involve consequential changes in entry 40 of the State List. As there was no representative of the Health Ministry present at the Conference, the consideration of this matter was postponed.

Entry 79: The Finance Minister of Bombay suggested that entry 79 of the Union List relating to "Stock exchanges and futures market" should be transferred to the Concurrent List. The Premier of the United Provinces suggested that "futures market" should be transferred to the State List. The Premier of Bombay said that stock exchanges would include "futures market". Shri K. M. Munshi pointed out that though the transactions were carried out in a particular place, the operators are spread over the whole of India, and that therefore the entry should be in the Union List. After some discussion it was decided to postpone consideration of this question to the 24th July when Dr. John Matthai would be present.

Entry 83: It was agreed that the word "sea" should be inserted after the words "carried by railway" in entry 83 of the Union List.

Entry 88: Shri T. T. Krishnamachari drew attention to entry 88 of the Union List and pointed out that there was no corresponding entry regarding the agricultural land in the State List. The Premier of West Bengal pointed out that entry 53 of the State List would cover that matter.

STATE LIST

Entry 50: The Finance Minister of Madras suggested that entry 50 of the State List should be amended to include therein a reference to taxes on passengers and goods carried by road transport so as to enable a State to levy a surcharge on the fares of buses run by private companies. His attention was drawn to entry 63 of the State List relating to tolls but he said that that entry would enable the imposition of tax on vehicles and not on passengers carried by vehicles. The Chairman agreed to consider this question.

Entry 58: The consideration of entry 58 of the State List was held over.

All other entries relating to taxes in the Union and the State Lists were agreed to.

COMPOSITION OF LEGISLATIVE COUNCILS IN STATES

The consideration of the new article relating to the composition of Legislative Councils in the States was then taken up. The Premier of the United Provinces wanted to know whether the principle of having second chambers had been agreed to as that was necessary before their composition could be discussed. Shri K. M. Munshi pointed out that the Assembly had already adopted article 148 and had thereby agreed to the principle of having second chambers in certain States. The question for consideration was whether the composition of the chamber should be left to be determined by Parliament or should be provided for in the Constitution itself.

The Prime Minister stated that as there was considerable confusion due to so many points of view being put forward and as no one was able to make

up his mind, it was felt that it had better be left to Parliament to determine the composition instead of putting it in the Constitution. The Premier of the United Provinces said that if it was to be decided by the Constituent Assembly functioning as the Provisional Parliament there would not be any difficulty, but if it was to be left to be determined by the future Parliament chosen on the basis of adult franchise then there might be considerable difficulties. He further stated that the important question as to whether there should be a provision for a joint session of the two Houses had to be also decided. He said that he was against such joint sittings and that in his view, in the event of a conflict between the two Houses, the opinion of the Lower House should prevail. He stated that if his suggestion was agreed to, then it did not matter what the composition of the second chamber was.

The suggestion of the Premier of U. P. was agreed to and it was decided to make necessary amendments in article 172 of the Draft Constitution. It was also decided that the composition of the Legislative Councils of States should be left to be determined by Parliament by law.

The new article 148-A proposed by the Drafting Committee providing for the abolition or creation of Legislative Councils in States was also agreed to.

The Premiers of Assam and Orissa proposed that there should not be any provision in the Constitution which would enable the Legislative Assembly of any State having no Legislative Council at the date of commencement of the Constitution to recommend the creation of such a Council.

The Prime Minister said that they could not in that way bind the future as it was just possible that those coming after might like to have a second chamber. The Chairman also agreed that they could not in that manner bind the future. Shri T. T. Krishnamachari pointed out that just as there would be a provision for the abolition of the second chamber where it existed, so also there should be a provision for the creation of a second chamber where it did not exist.

July 23, 1949

The Drafting Committee met the Premiers of the Provinces and of certain Indian States and also certain Ministers of the Government of India at 10 A.M. on the 23rd July, 1949, in the Constitution Hall and discussed with them the provisions in the Draft Constitution relating to Scheduled Castes and Scheduled Tribes.

SCHEDULED CASTES AND SCHEDULED TRIBES

The question whether the Scheduled Tribes should be defined in article 303(1)(x) of the Draft Constitution so as to include only tribes professing

tribal religion as proposed in amendment No. 3237 (Vol. II of the printed List of Amendments*), the notice of which has been given by Shri A. V. Thakkar, was taken up for consideration. The Premier of the Central Provinces and the Revenue Minister of Bihar supported this amendment. It was decided that a provision should be included in the Constitution which would enable Parliament, by law, or the President, by order, to determine the class of persons who should be treated in relation to each State as Scheduled Tribes for the purposes of the Constitution.

The question as to the modification of the list of Scheduled Tribes in the Eighth Schedule to the Draft Constitution was then taken up. After discussion it was decided that the Eighth Schedule should be omitted from the Draft Constitution and power should be conferred on the President to specify by order the tribes which would be classified as Scheduled Tribes in relation to each State and also so as to enable him to amend from time to time such order by the inclusion in or exclusion from the list of Scheduled Tribes any tribe.

A similar decision was also taken with regard to the enumeration of castes, races or tribes which will be treated as Scheduled Castes for the purposes of the Constitution.

The question was also raised whether the Fifth and the Sixth Schedules should be retained as part of the Constitution or it should be left to Parliament to make provisions by law as to the administration and control of Scheduled Areas and Scheduled Tribes in States other than Assam and the administration of the tribal areas in Assam. After discussion it was left to the Drafting Committee to examine this question.

Shri Munshi drew attention to an amendment, the notice of which had been given by the Drafting Committee, whereby it had been proposed that a person who belonged to a Scheduled Caste in a State shall be deemed to be a Scheduled Caste not only in that State but throughout the territory of India, and pointed out that this would mean creating a separate community of the Scheduled Castes. The Chairman replied that it was necessary to bring this amendment to enable a member of the Scheduled Castes in one State to offer himself as a candidate for a seat reserved for Scheduled Castes in the Legislature of another State. The further consideration of this question was left to the Drafting Committee.

LEGISLATIVE LISTS

The amendments proposed by the Ministry of Home Affairs in the Seventh Schedule to the Draft Constitution were first taken up for consideration.

*Not reproduced.

The results of the discussions are as stated below :

UNION LIST

Entry 2 : It was decided to redraft this entry as follows :

2. Central Bureau of Intelligence and Investigation.

Entry 3 : The amendment suggested in this entry by the Ministry of Home Affairs was accepted.

Entry 4 : It was decided that this entry should be suitably modified to include therein a reference to the maintenance by the Government of India of Armed Police Forces or other similar forces on the lines of the provision contained in entry 1 of List I of the Seventh Schedule to the Government of India Act, 1935, as originally enacted.

Entries 52, 57 and 58 : The amendments suggested by the Ministry of Home Affairs in these entries were agreed to. It was further decided that in entry 57, for the word "institutes" the words "Union institutes" should be substituted.

STATE LIST

Entry 1 : The proposal of the Ministry of Home Affairs to transfer the item "preventive detention for reasons connected with the maintenance of public order ; persons subjected to such detention" to the Concurrent List was agreed to but it was suggested by the Premier of the United Provinces that the new entry to be inserted in the Concurrent List should read as follows :

preventive detention for reasons connected with the stability of the Government established by law and the maintenance of public order and services or supplies essential to the life of the community ; persons subjected to such detention.

The Drafting Committee agreed to consider this suggestion.

Entry 2 : The amendment suggested by the Ministry of Home Affairs in this entry was accepted as being consequential on the inclusion of the reference to High Court in entry 52 of the Union List.

CONCURRENT LIST

New entry 2-A : The insertion of this new entry was agreed to subject to the modification suggested by the Premier of the United Provinces referred to above.

Entry 3 : The new entry proposed for substitution for this entry was also agreed to.

Entry 33 : The omission of this entry which was consequential was also agreed to.

EMERGENCY PROVISIONS

The consideration of articles 188 and 278 containing emergency provisions in case of failure of constitutional machinery in the States was then taken up. The Chairman drew the attention of the Premiers and other Ministers present at the conference to the redraft of article 188 suggested by the Ministry of Home Affairs.

The Premier of the United Provinces was of the view that the Governor should not exercise any of the functions vested in him by the Proclamation in his discretion but should be subject to the superintendence, direction and control of the President.

The next question discussed was as to the authority that should exercise the powers vested in the Legislature of the State on the supersession of such Legislature. Shri T. T. Krishnamachari maintained that the legislative power should be vested in Parliament as in article 278 of the Draft Constitution instead of in the Governor. Shri Alladi Krishnaswami Ayyar, however, considered this to be an unworkable proposition as Parliament would then be overburdened with the legislative work in relation to such State.

After some discussions it was left to the Drafting Committee to produce an acceptable draft in consultation with the Ministry of Home Affairs.

RIGHT TO PROPERTY

Article 24 of the Draft Constitution dealing with the rights to property was next considered. At the outset the Chairman proposed for consideration the adoption of the Australian model and suggested that an entry might be included in the Legislative Lists on the lines of clause (xxxi) of section 51 of the Australian Constitution which runs as follows:

(xxxi) The acquisition of property on just terms from any state or person in respect of which the Parliament has power to make laws.

Shri Alladi Krishnaswami Ayyar said that if the suggestion was accepted, it would still be permissible for courts to enquire as to whether the terms of acquisition were just or not. The Premier of the United Provinces proposed that the following two new clauses should be inserted after clause (2) of article 24:

(2-a) The payment of compensation referred to in clause (2) of this article may be in cash or in securities or bonds or partly in cash and partly in securities.

(2-b) No law making provision as aforesaid shall be called in question in any court.

Shri Alladi Krishnaswami Ayyar pointed out that if the amendment proposed by the Premier of the United Provinces was accepted, then article 24 might as well be omitted from the list of fundamental rights.

The Chairman of the Drafting Committee thought that a distinction should be made between the amount of compensation and the form in which compensation would be paid. He added that it would be perfectly legitimate to say that the manner in which compensation would be paid should be left to the jurisdiction of the legislature and no court should be entitled to question that. He, however, thought that the difficulties could be avoided by putting the item in the Legislative Lists by borrowing word for word the text of the Australian Constitution and omitting article 24 from the part relating to fundamental rights. The Premier of Assam suggested that the words "taken possession of" in clause (2) of article 24 should be omitted as otherwise their development activities would be seriously affected.

Shri Gopalaswami Ayyangar suggested the following alternative :

No person shall be deprived of his property, save by authority of law or without compensation, the amount and form of which shall be in accordance with law.

Shri Munshi thought that while the suggestion of Shri Gopalaswami Ayyangar would improve the draft, it did not meet the point of substance. He suggested that the zamindari should be exempted specifically and no exemption should be provided for any other property.

The Constitutional Adviser suggested the insertion of the following new clause after clause (2) of article 24 :

(2-a) The amount of compensation which is to be paid or the principles on which and the manner in which compensation is to be determined as fixed or specified in any such law as aforesaid shall, if the law so provides, be final and shall not be called in question in any court.

It was suggested that a satisfactory formula might be to retain only clause (1) of article 24 with the addition of the words "or without payment of compensation" and to utilize entry 35 in the Concurrent List to prescribe the mode and manner of payment of compensation.

After some discussion, the final draft of the article was left to be settled by the Drafting Committee.

July 24, 1949

The Drafting Committee met the Provincial Premiers and Finance Ministers at a Conference held at 10 A.M. on Sunday, the 24th July, 1949.

The Hon'ble the President of the Constituent Assembly, the Hon'ble the Prime Minister and the Hon'ble the Finance Minister were also present.

FINANCIAL PROVISIONS

The committee took up the consideration of articles 264, 264-A, 265 and

265-A and 266, the consideration of which was held over on the 22nd July, 1949.

Article 264 : The Premier of the United Provinces objected to the proviso to this article on the ground that it would debar a municipality from imposing any new tax hereafter. After a further exchange of views, the Chairman summed up the position by saying that there was general agreement that property of the Union should not be liable to any tax provided that 'property' did not cover business. He stated that certain municipalities were being permitted to tax the property of the Centre and that this would continue until Parliament provided otherwise. He also stated that the only question left over for consideration was about a new tax which a municipality might hereafter impose. He thought that Parliament would decide the question in the same manner as it had done in the case of railway property.

New article 264-A : The consideration of the new article 264-A relating to sales tax proposed by the Ministry of Finance was then taken up. The Finance Minister, Dr. John Matthai said that the Government of India had been considering the proposals containing the new article for some time past in consultation with the Provincial Governments. There was a conference of Provincial Finance Ministers and it had been agreed at that conference that sales tax should be the exclusive right of the Provinces. The only question which was for consideration was whether this right to levy sales tax should be as absolute as it had been in the past or some limitation ought to be imposed. Though there was some conflict of opinion over this question, the Government of India came to the conclusion that the Provincial Governments should levy this tax in such a way as not to conflict with the policy of the Central Government with regard to business and industrial matters. He, however, observed that when the budgets of this year were produced, it was evident that there was conflict and overlapping and so the Government of India thought that the matter should be examined further. He said that in proposing this amendment he had taken into account the consideration that Provincial Governments needed this source of tax to meet their growing expenditure and that his aim was only to impose the minimum amount of restrictions to safeguard firstly the policy of the Central Government in regard to industrial development and secondly to see that there was a certain amount of uniformity between the provinces in regard to the imposition of this tax. He also added that the new article 264-A as put forward before the conference provided the minimum that would be necessary by way of restrictions if these two objectives were to be satisfied.

The Premier of Orissa and Shri Bishwanath Das both suggested that the tax should be collected by the Centre and distributed among the Provinces on some basis. This would avoid all the difficulties. The Finance Minister stated that there was a considerable volume of objection to such a proposal

and that it had accordingly been given up.

The Premier of the Central Provinces and Berar pointed out that by selling the goods manufactured in the Central Provinces through depots opened in Calcutta his Province was being deprived of the right to levy any sales tax on such sales.

The Finance Minister pointed out that if the Premier of the Central Provinces wanted firms selling such goods to pay sales tax in the Central Provinces it would be wholly against the very principle of sales tax being a tax on consumption. He further stated that actually a Province like the Central Provinces would stand to gain on the whole by the present system of sales tax levy because goods which were produced in the industrially advanced Provinces would come into the Central Provinces for consumption and would become subject to sales tax there.

The Finance Minister of Bombay observed that the provisions contained in the revised article were rather controversial and that they might affect the provisions of the Draft Constitution relating to freedom of communication, trade, etc., between the Provinces and accordingly suggested that it might be left for examination by some sort of commission or conference between the Provinces.

The Chairman pointed out that the amendment proposed was intended to prevent the provisions of article 16 of the Constitution, relating to freedom of trade between the States, being circumvented by the Provinces and thereby to minimize litigation.

Shri Alladi Krishnaswami Ayyar also thought that it would have been far better to make sales tax a Central tax but that being not possible he would accept the next best—to leave this power with the Provinces and provide safeguards against its misuse. The specific power, he said, was confined to sales tax within the province or unit and the word "sales" had a definite legal connotation. It was only when the property in the goods passed within the limits of the Province that there could be any sale within the Province. It was not possible to avoid the goods being in one place and the sale of these goods being effected in another place. What was subject to provincial power under this particular item was not the property in the goods but its sale transaction. It was not open to Provinces, he observed, to expand the definition of the "sale" artificially. That was beyond their power.

The Chairman agreed that this was a very vital matter for all the Provinces and the Centre. The Centre had no desire to encroach on the proceeds of sales tax. All that was aimed at was to avoid conflict with article 16. He further suggested that Provincial Premiers present at the conference should be requested to send exact amendments putting in the exact words that they would like to be introduced in this new article 264-A and on receipt of such amendments the Drafting Committee would in consultation with the Finance Ministry, reconsider the matter. It would not

be open to any Province to say that the entire provision should not be there. The Centre on its part, the Chairman observed, would be prepared to make it as far as possible acceptable to all the Provinces. The Finance Minister Dr. John Matthai agreed with this suggestion of the Chairman of the Drafting Committee and also suggested that the alternative of leaving such restrictions to be imposed by parliamentary legislation might also be considered.

Shri K. M. Munshi referred to taxes on newspaper advertisements and said that power to tax should be left to Parliament as it was only proper that there should be a uniform tax throughout the country. All the Premiers of Provinces were opposed to this suggestion and the matter was not pursued further.

Article 265 : This article was agreed to without much discussion.

Article 265-A : The consideration of the new article 265-A, proposed by the Ministry of Works, Mines & Power was then taken up. Shri N. V. Gadgil, Minister for Works, Mines & Power referred to the case of the Damodar Valley Corporation and stated that there were three governments—the Central Government, the Government of Bihar and the Government of West Bengal—who were to share the profits as well as the losses. If the Bihar Government were to impose a sales tax on the consumption of electricity and the Government of West Bengal were to impose a similar tax on the sale of water, the Central Government would be helpless and might incur a considerable loss. The purpose of this amendment was only to avoid any such loss to the Central Government.

The Chairman felt that as such activities would be spread over two or three States, it would not be right to leave the power of taxation with the States as that might mean double taxation or different scales of taxation with the result that the Corporation might be placed in a very embarrassing position. He accordingly thought that taxation must be made subject to law made by Parliament. The Prime Minister suggested that instead of burdening the Constitution with all these details, power should be given to Parliament to deal with such matters and that apart from the entry in this list, there might be an article in the Constitution giving power to Parliament to deal with such matters. At the suggestion of Shri Gadgil further consideration of this matter was left to the Drafting Committee.

Article 266 : The new article proposed for substitution for the existing article 266 by the Finance Ministry was then taken into consideration. At the outset the Premier of the United Provinces suggested that the article might be omitted. The Finance Minister Dr. John Matthai however pointed out that the matter required a little more consideration. When nationalization was taken up on a large scale, the income-tax derived would be reduced and an alternative source of income should be found out, and simultaneously private enterprise should not be placed in a position of

disadvantage by exempting Government undertakings from taxation. To a question by the Premier of Orissa whether the same arguments did not apply to Central Government undertakings Dr. Matthai replied that Railways contributed to the general revenues and that the contribution of the railways during the war period was perhaps very nearly the same as what a private company would have been required to pay including excess profits tax. He added that the Industrial Finance Corporation, which was a corporation created by a law of the Dominion Legislature, was also subject to income-tax. The Premier of the United Provinces said that under the Government of India Act, 1935, only business carried on outside the Province was subject to taxation and that the Provinces did not start industries for earning profits but to meet the vital requirements of the people. Dr. Matthai agreed that in the case of public utility undertakings the rate of taxation should be of a concessional character. He also agreed that there should be no differentiation in regard to taxation of Provincial and Central undertakings and that the matter did require further consideration. He thought that some distinction should be made between items (i) to (iv) in Explanation (2) to clause (1) of the proposed article which referred to public utility services and the remaining items in that Explanation. In regard to public utility services, he thought, either they might be exempted from taxation or the rates of taxation might have to be specially considered with regard to the circumstances of the undertakings.

The Premier of Bihar desired that the fertilizer projects should be classified as public utility services.

Dr. Matthai undertook to subject the article to further examination by his Ministry in the light of the above discussion and promised to consider particularly what exactly would be the decision regarding the levy of income-tax on public utility concerns, and what was the precise scope of public utility concerns.

He also undertook to examine the question of levying income-tax on Provincial or Central public utility undertakings and business undertakings when run by a Provincial Government.

As regards co-operative concerns Dr. Matthai said that in the matter of exemption from income-tax there was a fundamental difference between co-operative societies and concerns run by the State.

The Finance Minister of Bombay raised the question of inclusion in the Concurrent List of the entry "Stock exchanges and futures market and taxes other than stamp duties on transactions therein". Dr. Ambedkar pointed out that the Expert Committee strongly felt that the entry should be in the Union List. The Finance Minister agreed to look into this matter also.

(IV) LETTER FROM RAJKUMARI AMRIT KAUR TO B. R. AMBEDKAR
August 20, 1949

On going through the proceedings of the Conference held by the Drafting Committee with the Premiers of Provinces on the 21st and 22nd of July 1949, I observe that no final decision seems to have been arrived at on some of the important amendments suggested by the Health Ministry regarding the distribution of subjects in the Seventh Schedule of the Draft Constitution. Regarding entry 15 of the State List, I observe that while the Premiers' Conference accepted the proposal to transfer "Vital statistics including registration of births and deaths" to the Concurrent List some of the Premiers objected to the transfer of "Public health and sanitation" to the same. It is not clear if the Drafting Committee themselves have taken any decision in the matter. It is obviously necessary that the Centre should have powers to legislate on health matters for the whole country whenever necessary. The Central Government will be failing in its duty, if it does not assist the Provinces and States in the development of their health plans as well as coordinate their activities in a manner designed to promote the interests of the country as a whole. I feel that, although the Premiers' Conference has agreed to include in the Concurrent List certain important subjects such as "Vital statistics and birth and death registration" and "Adulteration of food and drugs", active cooperation between the Centre and the constituent units of the Indian Union can be promoted on an adequate scale only by bringing "Public health" also into the Concurrent List. Such cooperation is particularly needed in the field of preventive health measures and in the development of teaching and research. I understand that the Provincial Premiers pointed out that, if the Centre laid down standards which proved to be impracticable for the Provinces, administration would become difficult. These fears are unfounded because no legislation is undertaken in the Concurrent field without full consultation between the Centre and the Provinces. Central legislation designed to promote coordination over the whole field of common interest in the sphere of health will become possible, it seems to me, only if "Public health" is included in the Concurrent List. I would, therefore, most strongly urge that "Public health" should also be transferred to the Concurrent List. You will remember that we had agreed to this in Cabinet.

No decision appears to have been reached at the Conference on two other suggestions made by the Health Ministry mentioned in the enclosed note, copies of which were circulated at the Conference. I hope the Drafting Committee will agree to accept the suggestions contained in this note. I am of opinion that it is particularly important that drugs standards should be uniform throughout India and item 20 of the Concurrent List should be amended to read "Drugs including poisons" and consequential amendments should be made to item 40 of the State List.

I shall be glad to know the decision of the Drafting Committee on these points and I count on your help.

ENCLOSURE

FURTHER AMENDMENTS SUGGESTED BY THE MINISTRY OF HEALTH

(1) From item 86 of the Union List and item 52 of the State List the words "non-narcotic drugs" may be deleted altogether instead of being put in a new sub-clause (c) as suggested by the Law Ministry. The Indian Pharmaceutical Industry is of all-India importance and not merely of local importance. The products of the Pharmaceutical Industry are articles of importance in inter-Provincial commerce. If the industry is subject to provincial excise the rates of duty are likely to vary from Province to Province and this will hamper the Pharmaceutical industry. Hence the suggestion that drugs should not be subject to provincial excise.

(2) Item 20 of the Concurrent List which is "20. Poisons and Dangerous Drugs" should be amended to read "20. Drugs including Poisons".

It is essential that drugs standards control *i.e.*, the control of the quality of drugs should be uniform throughout India. To ensure this it is necessary that the subject of drugs and not merely "Dangerous Drugs" should be in the Concurrent List. Hence the suggestion. (At present this is not so and when the Drugs Act was passed in 1940 it was necessary for all the Provincial Legislatures to pass resolutions empowering the Centre to legislate on the subject. The need for uniformity in Drugs Standards legislation was recognised even then.)

Amendment of item 20 of the Concurrent List will require consequential amendment to item 40 of the State List. This could be amended to read "40. Intoxicating liquors".

PART SIXTEEN
LEVY OF SALES TAX BY STATES AND LIABILITY OF
STATE PROPERTY AND INCOME TO UNION
TAXATION

COMMENTS BY PROVINCIAL GOVERNMENTS
July-September 1949

[At the Conference of the Drafting Committee with the Premiers and Finance Ministers of Provinces and Indian States and the Ministries of the Central Government there was considerable discussion inter alia on draft articles 264-A (restrictions on the levy of taxes on the sale or purchase of goods), 265-A (exemption from taxation by States of water or electricity in the case of river valley authorities) and article 266 (liability of the property of States to Union Taxation). It was eventually decided that all Provinces should send in their views on these matters in the form of draft amendments for the consideration of the Drafting Committee. Suggestions were accordingly received by the Drafting Committee from the Provincial Governments of Central Provinces and Berar, Orissa, West Bengal, Bihar, Madras, Bombay, East Punjab, Assam and the United Provinces. Reconsidering the provisions in the light of the comments of the Provincial Governments, the Drafting Committee decided in consultation with the Ministry of Finance to introduce some important changes in these articles.]

The comments received from the Provincial Governments, a revised draft prepared by the Ministry of Finance, and notes sent in by Alladi Krishnaswami Ayyar and Munshi are reproduced below.]

(I) COMMENTS BY PROVINCIAL GOVERNMENTS

(a) LETTER FROM THE PREMIER OF THE CENTRAL
PROVINCES AND BERAR
July 29, 1949

I FORWARD herewith a redraft of article 264-A of the Constitution of India to be substituted for the one proposed by the Finance Ministry of the Government of India regarding taxes on sale or purchase of goods and also a draft amendment to article 266 regarding exemption of the Governments of States in respect of Union taxation.

ARTICLE 264-A

2. (1) The Government of the Central Provinces and Berar accept the provisions contained in sub-clauses (b) and (c) of clause (1) in the draft proposed by the Finance Ministry of the Government of India which prohibit the tax on goods at the stage of import out of India, but are opposed to sub-clauses (a) and (d) of clause (1) and to clause (2) for the following reasons—

- (i) The provisions of the general law relating to sales are so flexible that dealers would find no difficulty in showing the sales in a State where it is most advantageous for them to do so, that is, where goods are exempt or the incidence of the tax is lower. Sub-clauses (a) and (d) of clause (1) referred to above restrict the tax to goods sold for consumption within the State and it would seriously curtail the revenue resources of a backward State like the Central Provinces and Berar and cripple the development programme.
- (ii) Sub-clause (2) would make a producing State lose entirely to a consuming State any advantage it can derive from its natural resources. It should be recognized that a State which produces or manufactures certain goods and probably also undertakes liabilities in doing so naturally deserves and should reasonably expect to get some benefit from the same.

(2) In the draft proposed by the Government of the Central Provinces and Berar sub-clause (c) under clause (1) would empower Parliament to prohibit the imposition of a tax on goods which are essential for the life of the community or for the development of agriculture. The Government of the Central Provinces and Berar are of opinion that sales tax should not at all be levied on food grains, agricultural implements of any character and manures. For some time to come at least Parliament should be empowered to prevent taxation on all agricultural machinery.

(3) Clause (2) as drafted by the Government of the Central Provinces and Berar conforms to the decision reached at the Conference of Finance Ministers held in October 1948* to restrict the incidence of the tax on goods exported from one State to another and which are considered essential for the purpose of industrial or economic development of the Union. It was agreed at the conference that a ceiling of three pies in a rupee should be fixed for exports from one State to another without a right to the importing State to levy the tax and the goods referred to were coal, cement, steel, cotton and cotton yarn, hides and skins, oil seeds, rubber, minerals and jute. The ceiling of three pies also applied to exports of textiles, plant and machinery, gur, vegetable oil products and sugar with the option to the importing State to apply any rate of tax on internal

consumption. In the opinion of the Government of the Central Provinces and Berar article 264-A should contain provision so that no State would levy a tax of more than three pies in the rupee on goods either exported or on goods of least importance to industries. Clause (2) in the draft proposed by the Government of the Central Provinces and Berar is designed accordingly.

3. The Government of the Central Provinces and Berar would prefer that the description of taxes on sale of goods should stand as adopted by the Drafting Committee and are opposed to the short description proposed by the Finance Ministry of the Government of India.

ARTICLE 266

4. Notwithstanding the elaborate redraft of article 266 proposed by the Finance Ministry of the Government of India, the Government of the Central Provinces and Berar would propose the deletion of the proviso and the explanation as contained in the draft prepared by the Drafting Committee. The opinion of the Government of the Central Provinces and Berar is that trade or business or manufacture of any kind carried on by or on behalf of a Government as an exclusively State concern ought to be exempted from union taxation. Taxation of the profits of State Government's trading operations is a retrograde step, which would cause serious financial embarrassment to the States. Apart from the fact that nationalization of key industries is the accepted policy of all Governments, including the Central Government, it has to be borne in mind that in States which are industrially backward State Governments have necessarily to take a much more active part in the promotion of new industries and the expansion of existing ones, if the States are to achieve adequate result within a measurable time. If the profits of these undertakings are to be taxed, the incentive to industrialization will be curbed and the implementation of the accepted policy of nationalization retarded. Moreover, when the States have reached the limit of their taxable resources and are hard put to it to find additional sources of income, they can ill afford to forego the income represented by the taxes. In the circumstances the Government of the Central Provinces and Berar are not only wholly opposed to the draft article 266 proposed by the Ministry of Finance but they also think that the article as it stands in the draft prepared by the Drafting Committee should be amended on the lines suggested in the draft enclosed.

APPENDIX

AMENDMENTS TO DRAFT ARTICLES 264-A AND 266 PROPOSED BY THE GOVERNMENT OF THE CENTRAL PROVINCES AND BERAR

Amendment No. 1: After article 264, the following article be inserted :

264-A. (1) No law of a State shall impose, or authorize the imposition of, a tax

on the sale or purchase of goods where such sale or purchase—

(a) takes place in the course of the import of the goods into the territory of India; or

(b) is the last sale or purchase effected in India with a view to the export of the goods out of the territory of India; or

(c) is the sale or purchase of any goods declared by Parliament by law to be essential for the life of the community or for the development of agriculture.

(2) No law of a State shall impose or authorize the imposition of a tax at a rate exceeding such rate as Parliament may by law provide, in respect of a sale or purchase of any goods declared by Parliament by law to be essential for the purpose of industrial or economic development of the Union, if the sale of such goods is for delivery outside a State and the goods are actually so delivered.

Amendment No. 2: In article 266, the proviso and the explanation shall be deleted.

Note: Amendment No. 2 seeks to amend article 266 as contained in the Draft Constitution of India as the Provincial Government are opposed to the draft of article 266 as proposed by the Government of India.

(b) LETTER NO. 555—REFORMS, FROM THE ADDITIONAL SECRETARY TO THE
GOVERNMENT OF ORISSA

July 30, 1949

At the Provincial Premiers' Conference with the Drafting Committee of the Constituent Assembly held from the 21st to the 24th instant, it was suggested, after articles 264-A and 266 of the Draft Constitution had been fully discussed, that all Provinces should send in their views on the provisions sought to be made in these articles in the form of draft amendments. The Government of Orissa have now fully considered this matter, and the enclosed draft amendments represent their views on the two important questions of:

(a) imposition of restrictions on the power of Provincial Governments to levy and collect the sales tax; and

(b) the liability of Government to pay income tax on the profits accruing from trade and business activities of the State.

2. Although an attempt has been made in consultation with the legal advisers of this Government to put the draft amendments in as good a legal shape as is possible in the time available, it is apprehended that the draft may not be perfectly clear as to the intentions of this Government; and I am therefore to briefly explain as follows the import of the amendments recommended.

With regard to article 264-A, the view of the Provincial Government is that the sales tax should be centrally administered, levied, assessed and collected, but the net proceeds of the tax should be distributed between the units and the Union of India in such manner and on such basis as Parliament may determine on the advice of the Finance Commission, the constitution of which has been provided for elsewhere in the Draft Constitution. In case this recommendation is not acceptable, this

Government would suggest, as an alternative measure, that the restrictions on the power of the Provinces to levy and impose the sales tax should be no more and no less than what were agreed to at the Finance Ministers' Conference held in October 1948. These restrictions have been indicated in the enclosed alternative draft of article 264-A.

As regards article 266, the view of this Government is that if certain specified categories of trade and business activities of the State are laid down in the Constitution as liable to the tax on incomes, they should be deemed to be so liable whether such trade or business is carried on by the Union or by the component States. Secondly, the Provincial Government would suggest that the Constitution should make it clear that hydro-electric and irrigation undertakings or electric, gas or water supply undertakings or harbours and docks at minor ports should be excluded from the categories of trade or business liable to income tax if carried on by or on behalf of a component State or the Indian Union.

APPENDIX

I. Article 264-A shall read as follows :

Taxes on sale of goods shall be levied and collected by the Government of India and the net proceeds thereof after meeting all incidental and consequential charges and expenses, distributed among the States and each State shall receive such percentage of the same as Parliament may determine on the advice of the Finance Commission constituted in this behalf.

Alternatively, if the plan of Central levy and collection of the sales tax is not accepted, article 264-A may read as follows:

(1) It shall not be lawful for any State to levy any tax on sale in respect of—

- (a) goods which may be declared by an Act of Parliament to be essential to the life of the community;
- (b) goods taken outside any State if they are not subject to any tax on sale or consumption within such State;
- (c) any agricultural implements which are worked with the aid of human or animal power.

(2) In respect of sale of other goods for which the State shall be competent to levy tax, Parliament may by an Act further provide—

- (a) the maximum rates of tax in the case of goods which are necessary for the industrial or economic development of the States or the economic welfare of their people;
- (b) a uniform standard rate of taxation in all the States in respect of such luxury articles as may be specified.

II. Article 266 shall read as follows:

- (1) Where a trade or business undertaking of any kind is carried on by or on behalf of a State or the Union, that State or the Union as the case may be shall in respect of each such trade or business undertaking and all operations connected therewith, all property occupied, and all goods owned for the purposes thereof or any income arising in connection therewith, be liable to Union taxation in the same manner and to the same extent as in the like case a company would be liable, provided that the liability of the State or the Union shall be determined with reference to each such trade

or business undertaking separately, without reference to other trades and business undertakings carried on by the State or the Union.

Explanation: (1) For the purposes of this article any undertakings relating to hydro-electric and irrigation and to electric, gas, or water supply, as well as harbours and docks at minor ports, which are essential for the economic development of a State or the Union and any operations incidental to the ordinary functions of the State, such as the sale of the forest produce of any forest under the control of the Government (without applying thereto any process other than that ordinarily employed by the owner of a forest) or of any article produced in any jail within a State, shall not be deemed to be a trade or business carried on by or on behalf of the State or the Union as the case may be.

(2) Save as hereinbefore provided, the Government of a State shall not be liable to Union taxation in respect of lands or buildings situate within the territory of India, or income accruing, arising or received within such territory:

Provided that nothing in this clause shall exempt the Ruler of any State for the time being specified in Part III of the First Schedule from any Union tax in respect of lands, buildings or income, being his personal property or personal income.

(c) LETTER NO. 1745-F.T. FROM THE SECRETARY TO THE GOVERNMENT OF
WEST BENGAL, FINANCE DEPARTMENT
August 1, 1949

As suggested in course of the recent conference of the Drafting Committee with the Provincial Premiers, I am directed to forward herewith for the consideration of the Drafting Committee draft amendments to articles 264, 264-A, 265-A and 266. A short explanatory note has been given at the end of each draft amendment proposed.

ARTICLE 264

Add the following further proviso to article 264 :

Provided further that nothing in this article shall exempt the property of the Union from a non-discriminatory tax levied for the purposes of local government within the meaning of entry 14 of List II to the Seventh Schedule.

A short explanatory note: This is in accordance with the general view expressed at the conference that Union property should not be exempt from local taxation provided it is of a non-discriminatory character.

ARTICLE 264-A

Clause (1): For clause (1) of the new article 264-A proposed by the Ministry of Finance, Government of India, substitute the following:

264-A (1). No law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of goods shown, to the satisfaction of an authority

appointed by or under such law, to have been despatched by or on behalf of the seller or the purchaser, according as the tax is on the sale or the purchase of the goods, to an address—

- (i) in India outside the Province for the purpose of resale or for use in the manufacture of or in the execution of a contract; or
- (ii) outside India.

A short explanatory note : “(a)” and “(b)” in the draft of the Finance Ministry of the Government of India are unnecessary as no Province can under the Constitution, as it is, tax a sale outside the Province nor can it levy a tax on imports, “(c)” as in the draft of the Ministry of Finance, Government of India, is too vague and will be administratively unworkable. This was pointed out by Sir Alladi Krishnaswami Ayyar in course of the discussions. The intention of the Ministry of Finance appears to be to prevent Provinces from taxing goods going out of the Province but not to touch their freedom to tax goods coming into the Province. It is further necessary from the administrative point of view that the claim for exemption in such cases must be based on or related to the actual facts of despatch outside the Province and that such despatch must be established in order to qualify for exemption. An attempt has been made to bring these points clearly in the draft suggested above.

Clause (2) of article 264-A proposed by the Ministry of Finance, Government of India :

Delete clause (2) or, alternatively, add the following after clause (2) :

Provided—

(a) that no law of Parliament shall make any such declaration in respect of goods on which a tax is being levied by or under a law of Parliament, and

(b) that a law making such a declaration shall cease to be in force as soon as a tax is levied on such goods by or under a law of Parliament :

Provided further that no Bill for making such a declaration shall be introduced in either House of Parliament except on the recommendation of the President.

A short explanatory note : This clause is unnecessary. When a taxing power is conferred on the Provincial Legislature it is not desirable to confer simultaneously a power on the Central Legislature to regulate the scope of such power granted to the Provincial Legislature. If, however, it is considered unavoidable that such a power should be conferred on the Central Legislature, safeguards should be provided so that the power may be used for the purpose for which it is intended and not for the purpose of ousting the jurisdiction of the Provincial Legislature merely to create greater scope of taxation for the Central Government. Further, such a declaration should not be made except at the instance of Government. These safeguards are provided in the two provisos proposed above.

ARTICLE 265-A

Delete article 265-A as proposed by the Ministry of Works, Mines and Power, Government of India.

A short explanatory note : When in a particular area electricity is supplied simultaneously by a Central corporation and a private corporation there should not be any compulsion in the Constitution to place the consumers of the power supplied by the Central corporation on a basis of privilege. This will be highly discriminatory.

Article 266, as proposed by the Ministry of Finance, Government of India :

In clause (1) after the words "business undertaking of any kind" add the following words "other than an undertaking of public utility".

After clause (1) of article 266 and before Explanation 1 add the following proviso :

Provided further that a law of Parliament imposing a tax on the Government of a State under this clause shall not in any way discriminate between a State undertaking and a Union undertaking.

In Explanation (1) to clause (1) of article 266 as proposed by the Government of India, Ministry of Finance :

Delete the portion within brackets.

Delete Explanation (2).

A short explanatory note : The proposed draft gives effect to the consensus of opinion of the conference that the tax should not be levied on public utilities and should not discriminate between a Central undertaking and a State undertaking.

(d) LETTER NO. 1185-F.R. FROM THE GOVERNMENT OF BIHAR

July 31, 1949

I am directed to forward a memorandum containing the comments and suggestions of the Provincial Government regarding the proposal of the Finance Ministry for the insertion of a new article 264-A with a view to restrict and curtail the powers of the Provinces in respect of the levy of taxes on the sale or purchase of goods. It might be mentioned that it was decided at the Provincial Premiers' and Finance Ministers' Conference held at New Delhi from the 21st to the 24th July 1949, that Provincial Governments should forward their views and suggestions in this respect to the Drafting Committee.

MEMORANDUM

SUBJECT: *Proposal of the Finance Ministry, Government of India, for the insertion of a new article 264-A regarding taxes on the sale or purchase of goods and for amendment of entry 58 of List II of the Seventh Schedule.*

The Government of Bihar have the following comments and suggestions

to make on the above proposals :

(1) *Clause (a) of sub-article (1) of article 264-A* : The Provincial Government are agreed in principle that a Province or State should not impose a tax on the sale of goods when such sale takes place outside its territorial jurisdiction. The power given to the Provinces to levy a sales tax on sales under the present Constitution (Government of India Act, 1935) is undoubtedly limited to transactions of sales which take place within the taxing Province. *Prima facie*, therefore, it would appear to be unnecessary specially to insert a provision in the Constitution Act declaring that no law of a State shall impose or authorize the imposition of a tax on the sale or purchase of goods where under the general law relating to the sale of goods such sale or purchase takes place outside the State. During the discussions which took place at the Provincial Premiers' and Finance Ministers' Conference held on the 24th July, 1949 at New Delhi, reference was made to the inclusion of provisions in the Sales Tax Acts of almost all the Provinces to the effect that notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods (i) which are actually in the Province at the time when, in respect thereof, the contract of sale as defined in section 4 of that Act is made or (ii) which are produced or manufactured within the Province by the producer or manufacturer thereof shall, wherever the delivery or the contract of sale is made, be deemed for the purposes of this Act to have taken place within the Province. The necessity for enacting such provisions arose from the fact that while the general law of sale embodied in the Indian Sale of Goods Act, 1930, defines 'sale' and 'agreement to sell', it leaves the question as to where the sale may be held to have taken place largely indeterminate. Under section 20 of the Indian Sale of Goods Act, 1930, sale or transfer of property in the goods sold takes place when the contract is made if the goods are specific and in a deliverable state, and the contract is unconditional. Even if the contract is conditional, sale takes place before the actual delivery of the goods as soon as the condition or conditions are satisfied, unless physical delivery of the goods was one of the conditions of the contract of sale. Under section 23 of the Indian Sale of Goods Act, in case of an agreement to sell unascertained or future goods the property in the goods passes to the buyer, or, in other words, sale takes place as soon as the goods are ascertained. In the circumstances, it is easy for dealers to avoid payment of the sales tax by making suitable alterations in the contract of sale and similar other devices. Often dealers succeed in avoiding payment of tax both in the Province where the contract of sale is made and in the Province where the goods are situated by manipulation of the terms of contract. Provinces like Bihar are likely to be very adversely affected unless clear provisions are made to determine the place where sale may be said to have been effected. It might be mentioned that ordinarily a contract of sale in respect of sales of cement,

coal tar, iron and steel, etc., produced in Bihar and sold to consumers of this Province as well as of other Provinces is made at Calcutta through marketing associations of producers such as the Tar Producers' Association or through Calcutta offices of the companies concerned. In the circumstances, the Provincial Government would suggest that instead of inserting clause (a) of sub-article (1) of article 264-A which is of a negative character and also in all probability superfluous, positive provisions may be inserted in the proposed Constitution Act or a law may be made by Parliament (under the Concurrent List) for the easy determination of the place where a sale may be said to have been effected. In drafting these provisions, care should be taken to ensure that the principles laid down are equitable considering the conditions and circumstances of all the Provinces, and simple and capable of preventing tax avoidance or in any case to make such avoidance very difficult. If this is not done, and the Provinces concerned are asked or compelled merely to delete the existing provisions in the Sales Tax Act declaring certain transactions to be sales within the Province, the only result of this course would be to encourage and facilitate lawful tax avoidance on an enormous scale which would seriously cripple the finances of all Provinces.

(2) *Clause (b) of sub-article (1) of article 264-A*: The Provincial Government see no objection to the inclusion of this clause.

(3) *Clause (c) of sub-article (1) of article 264-A*: The Provincial Government agree in principle that the export of goods outside the country should not be subjected to a provincial levy. The draft, as it stands, is however open to two very serious objections: (i) a Province levying the multi-point sales tax would be able to realize tax on sales of goods meant for export in the earlier stages, while Provinces which levy the sales tax only at one stage, viz., the last stage in the series of sales would be prevented altogether from realizing any tax on transactions in such goods; (ii) many merchants who do export business also carry on business in the same goods within the Province or the country, and it would be administratively impossible to ascertain whether in any case the goods purchased by such merchants were with a view to export or for internal sale and consumption. The difficulties pointed above would be largely eliminated if for the existing draft clause the following words are substituted:

Sale of goods despatched by or on behalf of the dealer to any place outside the Indian Union.

(4) *Clause (d) of sub-article (1) of article 264-A*: The complete exemption from tax on sales to dealers, manufacturers or building contractors belonging to other Provinces would result in very drastic reduction of the sales tax revenue of all the Provinces, but it would particularly hit financially poor and industrially backward Provinces like Bihar, Orissa and Central Provinces which do not possess large commercial centres such as

Calcutta and Bombay and where the purchasing power of the people is low. It might also be pointed out that the grant of such exemption would hit Provinces which levy the sales tax at a single stage only much more seriously than a Province like Madras which levies a multi-point sales tax. If this clause is finally included in the proposed Constitution Act, most provinces would be compelled to adopt the multi-point system of sales tax which would in effect mean the perpetuation of all the alleged evils of the sales tax. It is also important to note that it would be administratively impossible to verify whether purchases made in one Province by dealers of other Provinces are with a view to resale or for purposes of manufacture or for the execution of building contracts and not for private or personal consumption. It is also likely that, in many cases, goods purchased by dealers of other Provinces ostensibly with the purpose of resale in that Province might be sold in the Province in which the goods are purchased through various agencies. It is, therefore, apprehended that if draft clause (d) is incorporated in the Constitution Act, large-scale tax evasion would become unavoidable resulting in very serious loss of revenue to the Provinces concerned. It is of course true that when sales made to dealers of other Provinces are subjected to sales tax in the Province which supplies the goods, it often results in double taxation. Double taxation cannot, however, be regarded as an evil in itself. The real question is whether the incidence of taxation in such cases is excessive or beyond the capacity of the tax-payer. At present all the Provinces taxing sales of goods despatched to other Provinces charge only half the ordinary rate of sales tax on such sales. There is perhaps not much justification for the view that the small extra burden thus imposed on the consumer involves any serious hardship. Even if there is hardship, it should be possible for the Provinces concerned to come to an agreement regarding the principles and rates of levy of tax on such transactions. The appropriate course in this matter would, therefore, appear to be not the prohibition of the levy of sales tax on sales which take place in the course of inter-State trade or commerce but the fixation of ceiling rates of tax on despatches to other Provinces as was envisaged by the Sales Tax Sub-Committee of the Provincial Finance Ministers' Conference held in October, 1948. As far as Bihar is concerned, it is prepared to agree to uniformity as regards the principle and rates of such taxation. In the circumstances, it is suggested that clause (d) should be omitted altogether and action taken immediately for introducing uniformity as regards the principles and rates of levy of tax on sales taking place in the course of inter-State trade or commerce.

(5) *Sub-article (2) of article 264-A* : This is a very serious encroachment on the legislative power of the Provinces in respect of the levy of sales tax. There is no justification for assuming that the Provinces shall not have due regard for the life of the community or for national development

in the industrial and economic sphere. The Government of India have in their view the prohibition of levy of sales tax mainly on goods, such as coal and coke, iron and steel and cement. Most of these goods are produced by financially poor Provinces like Bihar, Orissa and the Central Provinces which would be very hard hit by the withdrawal of the present tax on these goods. Bihar would lose almost a crore a year if the Centre finally decided to prohibit the imposition of sales tax on these goods. It must be remembered that the cost of administration in mining and industrial areas is very heavy, though such areas do not ordinarily yield much land revenue or other taxes. Also, all the articles in question are bulk goods and their price in any locality depends largely on factors like cost of transport, production cost, producers' profits and middlemen's charges, and a low rate of sales tax cannot reasonably be regarded as materially affecting the price of such goods. This Province has already agreed that the rate of tax on coal and coke shall not be increased to more than 3 pies to the rupee. The existing rate of tax on sales of iron, steel and cement is 6 pies to the rupee if delivery is made in Bihar and only 3 pies to the rupee if the goods are delivered outside the Province. It might also be mentioned that the question of taxation of coal and coke, in particular, was discussed on the 16th June, 1948, at a high level conference in New Delhi presided over by Shri Gadgil and attended among others by the Premier of Bihar and Dr. S. P. Mookerji, and it was agreed at this conference that the sales tax on coal and coke should continue. Nothing has happened since which would call for a reversal of this decision.

(6) *Amendment proposed by the Finance Ministry of draft entry 58 of List II of the Seventh Schedule*: This will leave no scope to the Provinces to levy any tax on the use or consumption of goods, or generally on turn-over. The present structure of sales tax in the different Provinces may have to be modified and adjusted radically later in the light of experience, future needs of the Provinces and any alterations made in the Constitution Act in respect of the levy of sales tax. In any case, it would appear desirable that the provisions of the Constitution Act regarding distribution of powers to the various units should be in wide and general terms as far as possible to avoid frequent amendments to the Constitution Act. The Provincial Government would, therefore, suggest that the proposed amendment should be dropped.

(7) The Provincial Government would like to emphasize that there is already a serious disparity between the financial resources of the Provinces and their constitutional responsibilities and obligations. Excise is at present the largest and the most important source of Provincial revenue in Bihar, as also in some other Provinces, but the sales tax is now easily the second most important source. As the policy of prohibition has been included among the directive principles of the new Constitution, and the Provinces have not been given any additional source of revenue, the sales tax may

well be regarded as being almost the only important source of revenue left to the Provinces. In Bihar, the actual collection of sales tax amounted to Rs. 232 lakhs in 1948-49, but in view of the measures taken recently to tighten up the administration of the sales tax and on the present trend of collections it is expected that the collection of sales tax in Bihar during the current year will be of the order of Rs. 4 crores, and it may reach Rs. 5 crores next year without any further increase in the rate of tax. If the proposals of the Finance Ministry, particularly as regards prohibition of the levy of tax on sales made in the course of inter-State trade and commerce, and in respect of sales of essential goods, are carried through, the total income of a Province like Bihar from sales tax at the present rates will not exceed Rs. 1 crore and may be even less than this, as the scope for tax avoidance will be greatly widened by the insertion of the various clauses of the proposed new article 264-A.

(e) LETTER NO. 4542 ON, V. K. RAO, DEPUTY SECRETARY
TO THE MADRAS GOVERNMENT,
REVENUE DEPARTMENT
August 2, 1949

I am directed to enclose a revised draft of article 264-A (*See Appendix*). The revised draft seeks to eliminate features of the original draft which are not acceptable to this Government. The reasons for the changes desired by this Government are indicated below.

2. This Government have no objection to clauses (1)(a) and (1)(b) of the draft prepared by the Government of India. These are retained as clauses (a) and (b) of the revised draft submitted by this Government. [The language of clause (b) of the latter draft is slightly different from that of clause 1(b)].

3. This Government are in agreement with the view that no tax should be levied on a sale taking place when goods are exported outside the territory of India. They are also prepared to exempt from taxation sales taking place when goods are exported from one State within the territory of India to another. Under clause (1)(d) of the Government of India's draft, sales taking place in the course of inter-State trade or commerce are to be exempted when the purchase is with a view to resale or with a view to use by the purchaser in his manufacturing business or in a building contract undertaken by him. It is not known whether the intention was to treat purchase for personal consumption on a different footing. In practice, it will be found administratively difficult to ascertain the purpose for which the article has been used by the purchaser. This Government would therefore suggest that all sales taking place when goods are exported from one State to another within the territory of India may be exempted

from taxation whether such purchase is with a view to resale or with a view to consumption by the purchaser or for use by him in the course of his manufacturing or other business.

This Government would, however, point out that the exemption should apply only to the *last* sale taking place when goods are exported either to places outside the territory of India or to places in other States in India. If, as a result of the levy of a multiple point tax by a State, the article is subject to tax at stages prior to the export, such tax may continue to be levied.

Clause (c) of the revised draft submitted by this Government gives effect to the above principle, viz., that the last sale taking place when goods are exported out of the territory of India or to another State in India shall be exempted from taxation.

4. I am directed to state that clause (2) of the draft prepared by the Government of India is totally unacceptable to this Government. This clause seeks to ban the imposition of a tax on the sale or purchase of goods which are declared by Parliament to be essential (i) for the life of the community, (ii) for the industrial or economic development of the Union. Staple foodgrains like rice and wheat, pulses, salt, condiments, cooked goods and articles of clothing may almost all be regarded as articles essential to the life of the community and, if the principle that such articles should not be taxed is accepted, this Government will lose the bulk of their sales-tax revenue. This Government must therefore oppose the proposal in the interests of the financial stability of the Province. I am to state in this connection that a tax has been imposed on the sale of such commodities in this Province ever since the sales tax law came into force in 1939 and the tax has always been a multiple point tax. This Government consider that there is little reason at this stage to withdraw such articles from the scope of sales tax.

This Government are also unable to agree to the proposal for exempting from taxation the sale of articles considered essential for the industrial or economic development of the Union. The principle that exports from one State to another should not be taxed has been conceded. The imposition of a tax by a State on industrial raw materials and other articles essential for the economic development of the country will not therefore affect exports from that State to other States in the Indian Union as such articles by their very nature do not pass through a number of hands and are in practice taxed only at one stage. As regards taxation of such articles within the State itself, there is no reason to apprehend that the Government of the State will resort to taxation of such articles in a manner that will be detrimental to the industrial development of the State.

For the reasons given above, this Government would very strongly press for the deletion of clause (2) altogether.

5. I am to add that this Government have no objection to the proposed amendment to item 58 in List II.

APPENDIX

264-A. No law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of goods where under the general law relating to sale of goods such sale or purchase—

- (a) takes place outside the State; or
- (b) takes place when goods are imported into the territory of India; or
- (c) takes place when goods are exported out of the territory of India or to another State in India.

(f) LETTER NO. 2167-E/49-5 FROM T. A. VARGHESE, SECRETARY TO THE
GOVERNMENT OF MADRAS
August 2, 1949

SUBJECT: Introduction of new article 265-A in Draft Constitution.

I am directed to refer to the discussions during the Premiers' Conference at New Delhi on 24th July, 1949 on the proposal for the introduction in the Draft Constitution of a new article 265-A for exemption from taxation by States in respect of water or electricity in the case of authorities established by Parliament by law. I am to state that the Government of Madras agree to the general view expressed at the conference that this new provision will lead to discrimination within the Province and will make inroads into Provincial finances. They, therefore, object to the proposal especially as it is proposed separately to subject Provincial commercial schemes to Union taxation. The sources of revenue for a Provincial Government are few and inelastic. Under the existing Constitution, it is open to the Provincial Government to levy a "sales tax" on electricity. Actually an electricity duty is now being levied in this Province from electrical licensees on the power which they distribute to certain classes of consumers. The Provincial Government have already under consideration a comprehensive proposal for the levy of "sales tax" on electricity. This tax is quite independent of the charges normally levied towards generation and distribution of electricity. The Provincial Government will be very badly placed if they cannot leave sales tax from certain consumers of electricity merely because those consumers are supplied energy by a Corporation established by Parliament. Similarly the Provincial Government are now levying a tax on the use of water for industrial purposes. This tax has no relationship to the actual cost of supplying the water but is based on the capacity of the industry to pay. Obviously the Provincial Government cannot exempt an industry from the payment of this tax if that industry happens to take the water from a

Corporation established by Parliament.

2. If, however, the views of this Government are not accepted, I am to request that a provision may be made in the Draft Constitution as suggested by the Prime Minister of India, enabling Parliament to pass suitable legislation in regard to corporations or authorities established for the development of river valleys, in individual cases in consultation with the Provincial Governments concerned. The Provincial Government should be given a reasonable opportunity to prescribe adequate safeguards for protecting their sources of revenue.

(g) NOTE BY THE GOVERNMENT OF BOMBAY
August 12, 1949

I. *New article 264-A*: The main intention underlying this article is to prohibit the States from levying a tax on sales taking place in the course of inter-State trade and commerce. As the committee may be aware, the Government of Bombay has till recently continued to exempt from the sales tax, the sales of all goods despatched outside its territory. But on account of a very acute financial position, and the failure to get any redress from the Government of India in the matter of revision of income-tax allotments, it was compelled to levy on such transactions, from 1st April 1949, a tax at half the rates prevailing within the Province. Goods exempted within the Province remain exempt when despatched outside. It will be impossible for this Government to agree to forego the revenue derived from this extension of the sales tax unless some other compensatory sources of revenue are made available to it. The Government of Bombay, therefore, feels that any reconsideration of the question of provincial taxation of sales concluded in the course of inter-provincial trade and commerce should be held over till the main question of income-tax allocations to Provinces is decided. As the latter question is to be decided shortly, the postponement of the one pertaining to sales tax is not likely to be of any great consequence. Moreover, the levy of a tax on such sales does not seem to contravene in any way the provisions of article 16 of the Constitution Act. The tax is actually lower on sales to other Provinces than on sales within the Province. It does not discriminate against or put impediments in the way of the freedom of trade and commerce of other Provinces.

If, however, the committee is unable to agree to the above suggestion that the whole question should be held over pending the decision of income-tax allocations, the Government of Bombay would urge that the recommendations made at the Finance Ministers' Conference of 1948 should be accepted. That conference had recommended as follows:

- (i) No sales tax should be levied on exports to other Provinces of the

following commodities :

Grains and pulses, flour, *atta* and *maida*, matches and kerosene.

(ii) A ceiling of three pies in a rupee should be fixed in the case of the following industrial raw materials exported from one Province to another :

Coal, cement, steel, cotton and cotton yarn, hides and skins, oilseeds, rubber, minerals and jute.

If the sales tax is levied subject to this ceiling by the Province exporting the material, the Province importing it should not charge any further sales tax, if sold to a registered manufacturer for purposes of his manufacture.

(iii) A ceiling of three pies in a rupee should be fixed for the sales tax on the following goods exported from a Province :

Textiles, plant and machinery, vegetable oil products, and sugar.

It will be open to Province to levy a higher tax on internal consumption if it likes.

Explanation : In the case of commodities subject to multiple point sales tax the ceiling prescribed above should apply to total incidence of the tax.

These recommendations were accepted by most of the Provinces and have been given effect to by this Province and some other Provinces. The intentions of the Ministry of Finance and the Drafting Committee would in substance be carried out by these proposals without involving much financial loss to the Provinces and grave dislocation of their budgets. Suitable provision could be made in the Act to give effect to these proposals either under an order by the President or by an Act of Parliament.

In case, however, the alternatives suggested above are found unacceptable, the Government of Bombay would suggest the following modified draft for article 264-A :

264-A. (1) No law of a State shall impose or authorize the imposition of a tax on the sale or purchase of goods which are shown to the satisfaction of the appropriate authorities of the State concerned to have been despatched—

(i) to any place outside the territory of India, or

(ii) to any dealer in a place within the territory of India, but outside the territory of the State concerned, provided such dealer is directly liable to a tax on his sales or purchases under the law applicable to such place.

Explanation : In the case of a commodity subject to a multiple point sales tax, this prohibition shall apply to all points of taxation preceding the despatch, including the sales of the raw material, if any, out of which the commodity is manufactured. [The Explanation is important because of the system prevailing in Madras.]

(2) Except in so far as the Parliament may by law otherwise provide, no law of a State shall impose or authorize the imposition of a tax on the sale or purchase of coal, cement, steel, cotton and cotton yarn and jute.

This modified draft of article 264-A omits the first two clauses of the

original draft, which seem unnecessary if it is recognized that what has to be secured is the exemption from sales tax of goods actually despatched outside the territory of the State, irrespective of where the contract of sale may be said to have been concluded. As regards sales in the course of imports, goods in direct transit would not be liable to the tax, and goods which are taken delivery of within the State and thereafter exported would be covered by the exemption provided in the modified draft. The modified draft of article 264-A thus ensures that exports to foreign countries are not made liable to sales tax and, further, that there is no double incidence of sales tax on the same goods. A complete exemption of goods exported to other Provinces or States would give the directly-importing consumers (*i.e.* private consumers, as distinguished from dealers who pay the tax) in those places an undue advantage over the consumers within the Province.

In regard to exemption of essential goods, the Government of Bombay feels that these goods should be mentioned specifically in the article and the goods to be specified should be restricted to raw materials only. The provisions in the original draft article 264-A(2) are too wide and vague and are bound to lead to avoidable friction between the Union and the States and also between the different States.

II. *New article 265-A* : The Government of Bombay feels that this article should be omitted. The authority proposed to be exempted from tax on water is to be created by Parliament, presumably with the consent of the States concerned. The law creating such authority can therefore provide for such restrictions as may be necessary on the taxation of water stored or supplied by the authority. Alternatively, the same restrictions can be provided for and incorporated in a formal agreement between the parties concerned. As regards electricity generated and sold by any such authority, and on which, ordinarily, a duty would be levied and collected from the consumer, it would be invidious to exempt it from such taxation if other electricity undertakings in the State area are subject to the tax. Exemption of the sale of electricity by such authorities from State taxation would mean the foregoing of public revenues for the benefit of the consumers of electricity in particular areas and may also result in increasing the burden of taxation on consumers in other areas. For these reasons, the proposed article, it is urged, should not be incorporated in the Constitution Act.

III. *Article 266* : For the reasons already stated at the conference, the Government of Bombay is opposed to the proviso to and the explanation below this article. Neither is the redraft of this article proposed by the Ministry of Finance acceptable to this Government. As was conceded by the Finance Minister of the Government of India at the conference, there is no justification for discriminating between the trading concerns of the Central Government and of the Provincial Governments in the matter of taxation. The levy of income-tax on State concerns will discourage the process of nationalization of key industries and public

utility undertakings, and thereby not only impede a policy which has already been adopted, but also, perhaps, result in neither Government capital nor private capital (which admittedly continues to be shy) being made available for new and much-needed productive enterprise. The Government of Bombay urges therefore that the provisions proposed to be made in the Constitution Act for making the Provincial undertakings liable to Central taxation should be deleted in their entirety.

IV. *Entry No. 79 in List I of Seventh Schedule* : This relates to stock exchanges and other forward markets. It was suggested at the conference by this Government that the entry should be transferred to the Concurrent List (i.e. List III in the Seventh Schedule), if not to the State List. The reason for this is that, consistently with such basic principles as, on an all-India basis, may be laid down by the Government or the Legislature of the Union, the working of these forward markets, in its detailed and day to day aspect, is best directed and controlled by the authorities on the spot, viz., the State Legislature and the State Executive. It must be remembered in this connection that it is not merely two or three forward markets of all-India significance that need to be legislated for and controlled, but also numerous other smaller exchanges scattered all over the State. The Government of Bombay has for many years past been controlling the forward markets in stocks and shares and in cotton, and in 1947 enacted a comprehensive Act called the Bombay Forward Contracts Control Act. This Act has already been extended to cotton and bullion and is to be applied shortly to oilseeds. If the power to legislate in regard to these forward markets is not included in the Concurrent List, but is retained wholly by the Union, the result is likely to be that Provincial control will be rendered nugatory, on the one hand, while on the other, no practical and effective substitute thereto will be forthcoming from the Centre. It is therefore urged that the entry regarding control of stock exchanges and other forward markets should be in the Concurrent List so that uniformity of control and regulation of these markets can be achieved, without disturbing existing arrangements and without eliminating the possibility of effective control.

An important point which the Government of Bombay would like to urge in regard to the above entry is that, while the power to control and regulate the stock exchanges and other forward markets may be concurrent, the power to tax these markets or the transactions therein should rest entirely with the State Government. At present the Government of Bombay realizes a substantial income from these markets and any Union tax on these markets will adversely affect the provincial revenues.

For the above reasons, the Government of Bombay suggests that entry No. 79 in List I of Seventh Schedule may be split up into two and transferred to Lists II and III as shown below :

(i) In List II, the following new entry 58-A may be inserted :

58-A. Taxes on transactions on stock exchanges and futures markets.

(ii) In List III, the following new entry 28-A may be inserted:

28-A. Control and regulation of stock exchanges and futures markets.

(h) LETTER NO. 4619-B-49/58RA FROM THE SECRETARY TO THE
GOVERNMENT OF EAST PUNJAB, FINANCE DEPARTMENT

August 14, 1949

As suggested in the course of the recent conference of the Drafting Committee with the Provincial Premiers and Finance Ministers, I am directed to offer the following comments for the consideration of the Drafting Committee in respect of draft amendments to articles 264, 264-A, 265-A and 266:

Article 264: The East Punjab Government suggest that a further proviso should be added somewhat on the following lines:

Provided further that nothing in this article shall exempt the property of the Union from a non-discriminatory tax levied for the purpose of Local Government within the meaning of Entry 14 of List II to the Seventh Schedule.

Article 264-A: The East Punjab Government have already accepted the amendments proposed on a reference from the Government of India, Ministry of Finance, *vide* letter No. 2301-E&T., dated the 28th of May, 1949. In this Province, the exports of goods to other Provinces and cotton are already exempt from the payment of Sales Tax under the East Punjab General Sales Tax Act, 1948.

Article 265-A: This Government suggest the deletion of this clause, for it is considered that there should not be any provision in the Constitution which places the consumers of power supplied by a Central Corporation in a position of privilege when in any area electricity is supplied both by a Central Corporation and a private company.

Article 266: Even though East Punjab industrially is comparatively speaking a backward Province, this Government taking a long-range view of this matter, are of the view that there should not be any discrimination in this matter of taxation between a Central undertaking and a State undertaking. Any federal taxation of the profits of State Government enterprise would be a retrograde step, which would cause serious financial embarrassment to the States. Provincial Governments are at present exempt from the liability to pay Federal tax in respect of their trading or business operations within the provincial limits and East Punjab Government consider there is hardly any reason now to disturb the existing position, especially when Central property is sought to be exempted from Provincial taxation (articles 264 and 265 of the Draft Constitution) and also in view of the considerable addition to the list of Union powers at the expense of the Provinces.

If, however, any tax is to be levied on trade or business undertakings,

the East Punjab Government suggest that undertakings of public utility should be excluded from taxation and it should be provided further that no discrimination would be made between a State undertaking and a Union undertaking.

(i) LETTER No. 8B/2/49 FROM THE SECRETARY TO THE GOVERNMENT OF ASSAM, FINANCE DEPARTMENT
August 16, 1949

SUBJECT: *Amendments to the Draft Constitution.*

I am directed to forward herewith for consideration of the Drafting Committee the reactions of this Government to article 264 as in the Draft Constitution, articles 264-A and 266 as proposed by the Ministry of Finance, Government of India, and article 265-A as proposed by the Ministry of Works, Mines and Power, Government of India, and draft amendments to the aforesaid articles for consideration of the Drafting Committee.

1. *Article 264 : Opinion of this Government :* This Government are prepared to accept the principle of exemption of Union property from taxation by States provided there is reciprocity from the side of the Union towards property of the State. Under the provisions of sections 154 and 155 of the Government of India Act, 1935, there were such reciprocal exemptions. The first paragraph of article 266 of the original Draft Constitution embodied provisions of section 155 of the Government of India Act. But article 266 as redrafted by the Finance Ministry, Government of India, takes away the exemption of State property from Union taxation. This is discriminatory.

Hence, this Government suggest that paragraph 1 of article 266 of the original Draft Constitution should be restored.

In the alternative, this Government propose as a draft amendment that "article 264 be deleted".

2. *Article 264-A : Opinion of this Government :* This Government's view was, as stated in this Government letter No. FMT.28/49/7, that the definition of 'sale' should include an agreement for sale. The draft article will take away the right so long exercised by this Government with the assent of the Government of India. The Assam Sales Tax Bill received the assent of H.E. the Governor-General under section 107 of the present Constitution. There is a like provision in article 231 of the Draft Constitution which gives ample power to the President to exercise sufficient control by refusing assent where necessary. It is therefore felt that there is no need to insert the new article as proposed.

This Government accordingly proposed the following draft amendments:

- (1) That sub-clause (d) of clause 1 be deleted.
- (2) That in clause (2), the words "at a rate not higher than three pies in the

rupee" be inserted between the words "a tax" and "on the sale or purchase".

(3) That the original draft of item 58 in the State List be retained.

3. *Article 265-A*: This Government appreciate the spirit of the amendment suggested by the Ministry of Works, Mines and Power, but feel that similar reciprocal exemption should be extended by the Union towards first-rate public utility services like electricity and irrigation works developed and worked by the States for the benefit of the people of the State.

Hence this Government suggest the following draft amendment:

After article 265-A add the following clause:

265-B. No law of the Union shall impose or authorize the imposition of any tax in respect of any water or electricity stored or generated or consumed or distributed or sold by any authority established by a State, or on any profit or income earned thereby by a State.

4. *Article 266*: The views of this Government are that this article as redrafted by the Finance Ministry, Government of India, takes away the exemptions and privileges regarding income accruing in connection with immovable property as well as trade and business undertakings conferred by section 155 of the Government of India Act, 1935, and by the provision in the first paragraph of the original draft article 266 of the Draft Constitution, especially regarding immovable property. A reference is also invited to our views on article 264 stated above.

The new draft ropes in within the taxable categories even public utility services, to which this Government are seriously opposed. It also proposes to impose income-tax on basic industries undertaken by the State for rendering service to the people and with the object of nationalizing the key industries in pursuance of the policy laid down by the Government of India.

The only effect of the provisions laid down by this article will be to retard industrial development by removing the incentive of State enterprise even when confined to public utility services and basic essential industries in the Province. It will also have the consequence of subordinating the State Governments fiscally to the Centre, particularly when the Centre will be exempted from State taxation for such enterprises like Railway and other industries.

Moreover, unlike individual concerns, any profit earned by the States from such undertakings in all cases will be utilized for rendering service to the people, and these concerns will be run not from a profit motive but from a desire to render service to the people. This will indirectly place Government activity on the same plane as enterprises undertaken by individuals or companies for their own benefit.

The proposal to determine the taxable liability of the States with reference to each trade or business undertaking separately, without reference

to other trades and business undertakings carried on by the States, though in some cases it may help to lower the rate of assessment, will deprive the States of the benefits of setting off the losses sustained in one trade or business undertaking against profits earned in another or others. Such a privilege is enjoyed even by individuals and State enterprise under the circumstances will be in a disadvantageous position.

Hence this Government propose the following amendments :

(1) Add paragraph 1 of the original article 266.

(2) That clause (1) to article 266 as redrafted by the Finance Ministry be deleted.

or (in the alternative)

That in the third line of article 266(1) the words "in any part of India outside that State" be added after the words "of a State" and before the words "that Government shall".

If the above amendments are not accepted this Government propose the following amendments :

(1) Delete the whole article 266(1) as drafted by the Finance Ministry, retaining paragraph 1 of the original draft article 266.

(2) Add the words "in any part of India outside the State" after the words "Government of a State" and before the words "nothing in this article" in proviso (a) of the original draft article 266.

or (in the alternative)

Delete the brackets and the clause "without applying thereto any process other than that ordinarily employed by the owner of a forest,"

and

Add the words "or any other undertaking of public utility" after the words "jail within a State" and before the words "shall not be deemed" in Explanation (1),

and

Delete entries (i), (ii), (iii) and (iv) and the words 'Saw Mills' appearing in entry (v) of list of business appended to article 266.

(j) VIEWS OF THE PREMIER OF THE UNITED PROVINCES

August 28, 1949

Article 264 : For the proviso to this article the following should be substituted :

Provided that where a trade or business of any kind is carried on by or on behalf of the Union nothing in this article shall exempt that Union from any State tax or levy of a sum in lieu of such tax in respect of any property occupied for the purpose thereof.

Explanation : For the purpose of this article any operations incidental to the ordinary functions of the Union shall not be deemed to be a trade or business carried on by or on behalf of the Union.

or, alternatively,

That for the proviso to article 264 the following be substituted :

Provided that, where a trade or business of any kind is carried on by or on behalf of the Union within the territory of a State, the State, notwithstanding anything contained in article 217 of this Constitution, shall have power to levy a tax or a sum in lieu of such tax in respect of the income arising out of such trade or business, as well as in respect of the property occupied for the purposes thereof.

Explanation : For the purposes of this article any operations incidental to the ordinary functions of the Union shall not be deemed to be a trade or business carried on by or on behalf of the Union.

Article 264-A : Clause (1) (a) of this article may be made clearer by saying that sub-clause (a) will apply only when the goods sold or purchased are situated outside the State. The following proviso might be added to sub-clause (a): "Provided the goods are not situated within the State."

The exact significance of the words "with a view to" in sub-clauses (c) and (d) is not clear. The clauses might be abused for evasive purposes. To guard against such misuse at the end of sub-clause (c) the words "and the goods are so exported" and at the end of sub-clause (d) the words "and the goods are so resold or used" may be added.

The principle of clause 2 is agreed to but this need not be made a part of the Constitution. The clause may be deleted and necessary arrangements in this regard may be made in some other manner.

Item 58 of List II be reworded as follows:

Taxes on the sale, purchase or turnover of goods.

The suggestion to introduce "turnover" in this item was perhaps accepted by the Drafting Committee.

Article 265-A : No comments.

Article 266 : This article seeks to subject trade and business undertakings of State Governments to Union taxation and the amendment proposed by the Finance Ministry of the Government of India seeks to include in these undertakings hydel and irrigation schemes, electricity supply undertakings, markets, fairs, fisheries etc., transport undertakings, manufacture and sale of medicines such as quinine, house-building schemes, wholesale and retail marketing of agricultural produce, money lending and *takavi* and other loans and a number of others. This article is wrong in principle and will substantially reduce the income of State Governments besides its being administratively difficult to work in a number of cases. The Union Government's fear that it will lose in tax revenue to the extent that State Governments undertake industrial or business enterprises is not entirely baseless but it must not be forgotten that a State Government does not undertake industrial ventures merely for profit. Large public utility projects are undertaken because private enterprise cannot undertake them. Such are irrigation and hydel schemes. Road transport is undertaken because of

lack of coordination and cut-throat competition on the part of private operators. In short, a State has always a different and higher motive for starting industrial or business enterprises. If any profit accrues from them, it is utilized for the welfare of the people and not for any individual's benefit. It is, therefore wrong for the Union Government to subject such enterprises to taxation. Even if it is argued that there is nothing wrong in principle the article is inequitous because it is one-sided.

The Union Government is likely to lose very little if the present position in the Government of India Act of 1935 is allowed to continue. If the revenues of a State improve on account of profits or business enterprises that factor may be taken into consideration in sanctioning grants-in-aid from the Centre. What the Union Government may lose in tax revenue will thus be compensated by less expenditure on grants-in-aid. Article 266 should, therefore, be reworded to restore the position as it existed in the Government of India Act, 1935. In proviso (a) to this article the words "in any part of the Union outside that State" may be added after "on behalf of the Government of a State" and before "nothing in this article".

(II) REVISED DRAFT BY THE MINISTRY OF FINANCE

August 29, 1949

Revised draft of article 264 :

The property of the Union shall, save in so far as Parliament may by law provide for the payment of any tax in aid of the funds of any local authority, be exempt from all taxes imposed by or by any authority within a State:

Provided that until Parliament, by law, otherwise provides, any property of the Union in a State which immediately before the 1st April, 1937, belonged to the Government of India as then constituted and was then liable, or treated as liable, to a tax imposed by, or by any authority within, the corresponding Province or Indian State shall, so long as that tax continues in that State, continue to be liable or to be treated as liable thereto.

Revised draft of article 264-A :

(1) No law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of goods where under the general law relating to sale of goods such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of the territory of India.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorize the imposition of, a tax—

(a) on the sale or purchase of any such goods as may be declared by Parliament by law to be essential for the life of the community or

for the purpose of the industrial or economic development of the Union; or

- (b) on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce and is either with a view to re-sale by the purchaser in the course of his business or with a view to use by the purchaser for the purposes of any manufacturing business or building contract carried on or undertaken by him.

Revised draft of article 265-A :

No law of a State imposing or authorizing the imposition of, any tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by Parliament by law for regulating or developing any inter-State river or river valley shall be valid or operative unless it has been reserved for the consideration of the President and has received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous assent of the President being obtained to the making of any such rule or order.

Revised draft of article 266 :

(1) The property and income of a State shall, save as hereinafter provided, be exempt from Union taxation.

(2) Where a trade or business of any kind, which Parliament by law declares as not being incidental to the ordinary functions of Government, is carried on by, or on behalf of the Government of a State, that Government shall, in respect of such trade or business, or any operations connected therewith, or any property used or occupied for the purposes thereof, or any income accruing or arising therefrom, be liable to Union taxation to such extent, if any, as Parliament may by law provide.

Revised entry 58 of State List :

For entry 58 of List II of the Seventh Schedule the following entries be substituted :

58. Taxes on the sale or purchase of goods.

58-A. Taxes on advertisements.

(III) LETTER FROM ALLADI KRISHNASWAMI AYYAR TO AMBEDKAR
REGARDING ARTICLE 264-A
September 6, 1949

I am sending herewith my note to you on article 264-A as I feel, amidst opinions and cross opinions expressed at the Drafting Committee meeting. I am not able to make my points clear. The first point considered is that imports into and exports of goods out of the territory of India must be exempt from the operation of the Provincial or State sales tax laws. The

principle of the exemption is similar to that contained in section 9, clause (5) and section 10 of Article V of the American Constitution. In regard to exports the restriction is absolute in the American Constitution. In regard to imports, a State is prevented from levying duties on imports, except what may be absolutely necessary for executing its inspection laws. The principle is also one underlying article 264-A (1), clause (b), of your draft. To carry out this idea I would suggest the following amendments to clause (b):

Provided that no such tax shall be levied on articles exported from any State. If necessary you might add "during the course of transit", though that qualification is implicit in section 9, clause (5) of the American Constitution—
or on any import during the course of transit until delivery to the consignee or assignee.

2. *Article 264-A, clause (2): Comment—*

"Is either with a view to resale by the purchaser" introduces a subjective element into the liability for tax. I would therefore omit it. I would also omit "for the purposes of any manufacturing business" etc. The rest of the clause may remain as it is.

3. The problem as to whether there is to be a special definition of "sale" so as to exclude from the operation of that expression mere transfer of documents of title, though the physical delivery of the goods may be in another place, to meet the case of the Tata Iron Works and the jurisdiction of the Bihar Government, will have to be separately considered.

I have considerable doubts as to whether such a provision is called for, having regard to the course of modern trade and business and to the transfer of documents of title being the normal course of transferring property in goods *vide* the Sale of Goods Act. Different provinces will be interested differently in regard to this matter. If however the Drafting Committee decides to have such a provision I would insert the following:

Notwithstanding the law of merchandise and the law relating to the sale of goods to the contrary, a sale shall be deemed to have taken place only where the goods are situate and where the goods are actually delivered to the buyer or assignee.

4. I am not for any provision confining the right to levy a sales tax to a sale only to the consumer or to the last vendee. Such a provision will immediately nullify the Madras Sales Tax which has been working for the last nearly 10 years and will dislocate and jeopardize the finances of Madras. We have now introduced a number of inter-State exceptions in the interests of trade and the export and import trade. There is no need to add a further exception.

(IV) LETTER FROM ALLADI KRISHNASWAMI AYYAR TO
AMBEDKAR

September 15, 1949

In continuation of my earlier note on the question of sales tax, I should

like to send the following note for the consideration of the Committee:

If we interfere with the law merchant to meet the case of any particular province it may land us in difficulties. If actual delivery is made the conditions it may deprive the producing and selling province of all right to the tax and may benefit only the province where the buyer takes delivery of the goods. In the normal course when goods are exported say from province A to province B, the Railway Receipt is taken out in the name of the seller, sent to his agent in the province of the buyer or to a banker there with instructions to endorse and deliver the documents of title on payment. The net result will be say if the groundnuts of Madras are exported to Central Provinces, though the goods are Madras goods, the seller is a Madras seller because the buyer is at Central Provinces and the delivery is complete at Central Provinces, Madras cannot levy a tax whereas Central Provinces has the right to do so. Similar results will follow in regard to the manufactured goods of Tatas at Bihar. From my experience I know what Tatas do when iron and steel goods have to be delivered in Madras. The goods are entrained in the name of the Tatas, the Railway Receipts are sent to the Madras Office or to their bankers in Madras Province and on payment are endorsed and delivered over to the consignee. Whether actual delivery is taken as the test or endorsements of documents of title, Bihar will not get the benefit. Tatas would certainly not part with the goods and deliver the property in Bihar before payment of the price. I am afraid in trying to meet particular cases we may land ourselves in difficulties. Having regard to the manifold forms commercial dealings take, I would leave the matter to the law merchant. Of course this does not touch the first portion of the clause which says that during the course of transit goods which are the subject of inter-state trade cannot be taxed until the goods are at rest so to speak and become the common stock of the goods of the particular State.

(V) NOTE ON ARTICLE 264-A BY K. M. MUNSHI
September 1949

1. Tax on sale or purchase of goods ordinarily means tax on a transaction by which property in the goods passes. The place of sale is the place where this property passes from the seller to the purchaser.
2. Broadly speaking property in goods will pass to the seller—
 - (a) by delivery of goods against price or appropriation of goods with the knowledge of the producer;
 - (b) by delivery or transfer of documents of title to goods.
3. In our draft, the following kinds of sales are excluded:
 - (a) where the sale is in the course of the import of the goods into or export of the goods out of the territory of India;
 - (b) where the sale and purchase takes place in the course of inter-State

trade and commerce and is for the purpose of resale or for use in any manufacture or in the execution of a building construction.

In the result,

- (i) sale in the course of inter-State trade and commerce outside these two categories *will be* taxable.
- (ii) purchase by a consumer in one State from another State therefore will be taxable.

4. If Dr. Ambedkar's view is accepted, sale will have to be defined as "sale resulting in purchase by the consumer". Generally this sale would be by the retail dealer and would fall under clause 3(a) where property passes by delivery or appropriation with the knowledge of the producer. This would be the most convenient and equitable form of sales taxation. This would, however, exclude from taxation—

- (a) intermediate sales; and
- (b) sale from one State to another to an actual consumer.

This would considerably reduce the income of sales tax now accruing to the provinces.

5. If sale by transfer or delivery of documents of title to goods are excluded from the definition, the formula will have to run in some such form:

Notwithstanding anything contained in the general law of the sale of goods and where the sale of goods has been effected by transfer or delivery of documents of title to goods, sale of the goods represented by such documents for the purposes of entry in List II of Schedule VII, shall be deemed to have taken place only when and at the place where the goods, duly ascertained, are delivered to the purchaser or on his behalf against the relative documents of title.

This will have the effect of cutting out intermediate sales by delivery by transfer of documents of title to goods.

6. One of the suggestions of the Bihar and Central Provinces and Berar Premiers is that the place where the goods are produced and delivered should be the place of sale. Some such thing would really fall under this category.

The word "despatch" is suggested by Pandit Shukla in his letter of 3rd September 1949. Using this word would mean that though the sale has not taken place in a State and delivery is also not given there, the mere fact that the goods are produced in the State will be sale. This would really be an encroachment on the powers of the Centre of levying excise duty.

7. (i) If the definition of sale of goods as given in the Sale of Goods Act is maintained, Calcutta, Bombay and to some extent Madras will be gainers. (ii) If the definition in para 5 is adopted, the Provinces which have a very large population or have a higher standard of living will be gainers. In that event the United Provinces, Madras, Bihar and even the Central Provinces and Berar will get a good return, but the sufferers will be Bombay and Calcutta where intermediate sales by transfer of documents of title are very

frequent. So will Madras because it has taxed all intermediate sales—a very dangerous method.

8. The arguments of the Bihar and Central Provinces and Berar Premiers are that sales tax should be deemed to be sale on production irrespective of the place where the sale has been effected or property passes. This would be an excise tax which is Central and must be ruled out.

PART SEVENTEEN
PROTECTION OF RAILWAY COMMUNICATIONS;
CONSOLIDATED FUNDS AND PUBLIC
ACCOUNTS



SUGGESTIONS FROM MINISTRY OF RAILWAYS FOR
PROTECTION OF RAILWAY PROPERTY AND
PASSENGERS AND FROM THE MINISTRY OF
FINANCE REGARDING THE CONSOLIDATED
FUNDS AND PUBLIC ACCOUNTS

August-September, 1949

[At the concluding stages of the consideration of the Draft Constitution, two suggestions were made :

(i) by the Railway Ministry, for the inclusion of a provision empowering the Centre to give directions to a State "as to the measures necessary for the protection of railway communications within the State".

(ii) by the Ministry of Finance, making it clear that the Consolidated Funds would comprise the proceeds of revenue and borrowing and that certain other items such as repayment of loans, return of provident fund deposits, refund of other deposits, payment of money orders etc. would not be subject to the Appropriation Acts.

Necessary amendments to incorporate these suggestions in the Constitution were moved by Ambedkar on September. 9, 1949 and they now appear as clause (3) of article 257 and article 266.

The two communications containing these suggestions are reproduced below.]

EXTRACT FROM D.O. LETTER NO. 49GL32 FROM THE SECRETARY,
MINISTRY OF RAILWAYS, TO THE JOINT SECRETARY, CONSTITUENT
ASSEMBLY SECRETARIAT, REGARDING THE INSERTION OF
NEW ARTICLE 234-A
August 22, 1949

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DURING THE PAST TWO YEARS it has been the experience of the Railway Ministry that armed police protection for Railway installations and for escorting railway trains in widespread areas has been necessary for prolonged periods. Even now conditions are such that this extra protection

continues to be necessary in many areas. It has been agreed that the Centre will pay the Provincial Governments concerned for this extra protection. In view of the likelihood of the necessity for the additional protection continuing for some years, it seems desirable to place the requisitioning of such assistance on a proper legal basis. The Ministry of Railways propose that the following article be incorporated in the Constitution as article 234-A :

The executive power of the Union shall also extend to the giving of directions to a State as to the measures necessary for the protection of the railway communications within the State :

Provided that such directions shall be given only in default of agreement between the Government of India and the State regarding such measures: And provided further that where by virtue of any direction given to a State under this article expenditure has to be incurred in excess of what will be incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra expenditure that will have to be incurred by the State.

The Minister for Transport and Railways has approved.

LETTER NO. 6163-B 11/49 FROM M. V. RANGACHARI, JOINT SECRETARY, MINISTRY OF FINANCE, TO S. N. MUKERJEE, JOINT SECRETARY, CONSTITUENT ASSEMBLY SECRETARIAT
September 5, 1949

We have examined the provisions in the new Constitution as approved by the Constituent Assembly dealing with the setting up of a Consolidated Fund and connected matters in their practical application to Indian conditions and we feel that certain modifications are necessary.

2. It may help in understanding our difficulties if I briefly set out the present budgetary arrangements. Under section 136 of the Government of India Act, 1935, all revenues and public moneys raised or received by Government constitute "the revenues of the Dominion". The financial statement placed before the Legislature under section 33 covers all receipts and disbursements of Government whether on revenue, capital or other account. But the grants which are submitted to the vote of the Legislature under section 34(2) cover only expenditure met from revenue (including "working expenses" taken in reduction of revenue), capital outlay and loans and advances except advances representing merely book-keeping adjustments. The other disbursements out of the public account such as repayment of loans, return of provident fund deposits, refund of other deposits, payments of money orders, and other debt and deposit transactions, are not submitted

to the vote of the Legislature. This is largely a matter of convenience as apart from the repayment of debt, all these transactions are banking, remittance, book-keeping or transitory transactions; according to the strict letter of the law all these disbursements could be deemed to be "expenditure" with reference to section 34 of the Act. The Railways prepare their own budget as their finances (but not their balances) are separate, although their transactions flow into the same public account of Government as other transactions. The Railway grants follow the same pattern as civil grants and in addition to revenue and capital expenditure the expenditure met from the Depreciation and Betterment Funds is also voted. The Provincial practice in this matter approximates to that of the Centre. As far as possible we should like the existing position, so far as the voting of demands is concerned, to be maintained.

3. The provisions in the new Constitution make four fundamental changes in the present position, following largely the U.K. practice. In the first place article 248-A sets up a Consolidated Fund, which is almost co-extensive with the public account, except that the Civil Contingencies Fund would remain out of it. Secondly, article 248-B provides for the setting up of a Civil Contingencies Fund. Thirdly, article 94 provides for a formal Appropriation Act to authorize withdrawal of moneys from the Consolidated Fund. Fourthly, article 96(1) provides for an "on account" vote, pending the voting of the entire supply.

There is no objection in principle to any of these provisions but it results in a fundamental change in the matter of voting of supply by the Legislature. The logical result of treating the Consolidated Fund as co-extensive with the public account and making it obligatory [see article 94(3)] to have an Appropriation Act to enable funds to be withdrawn from it is that all Government disbursements will have to be covered by a vote of the Legislature except to the extent to which such expenditure is charged by law on the Consolidated Fund. As explained in the previous paragraph, disbursements under debt, deposit and remittance heads except disbursement of loans and advances are not now voted by the Legislature. These disbursements (whatever the strict legal view of the matter may be) do not constitute real expenditure which should come under Parliamentary control and in no other country are they submitted to the Parliamentary vote. We would therefore suggest that the existing procedure should be maintained as far as possible either by restricting the definition of the term "Consolidated Fund" to the proceeds of revenue and borrowing (the rest of the receipts accruing to Government being credited to the public account of the Government) or by restricting the provisions relating to the voting of grants and the Appropriation Act to expenditure met from revenue, capital outlay and disbursements of loans. We would prefer the first course and I enclose a redraft of article 248-A securing this, which you will doubtless cast into formal language. If this redraft is accepted in substance, it will retain, with

perhaps a few minor modifications, the existing budgetary procedure so far as the voting of demands is concerned. In addition, the expenditure on the repayment of debt will be treated as charged expenditure and included in the Appropriation Act. It may be necessary to amplify article 92(3)(c) to make it clear that repayments of the principal of debt will also be charged on the Consolidated Fund.

4. Incidentally, if the above proposal is accepted, draft article 263-A about Suitsors' Funds will have to be amended to provide for the payment of the money into the public account of the Government of India or of the State as the case may be instead of into the Consolidated Fund. I enclose a redraft for consideration :

REDRAFTS OF ARTICLES 248-A AND 263-A

248-A. (1) Subject to the provisions of article 248-B of this Constitution and to the provisions of this chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of India" and all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the account of that Government.

(3) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

263-A. All moneys received by or deposited with—

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of a State, as the case may be, or

(b) any court within the territory of India to the credit of any cause, matter, account or persons,

shall be paid into the account of the Government of India or of the State, as the case may be.

PART EIGHTEEN
REVISION OF THE DRAFT CONSTITUTION

RECEIVED THE
OFFICE OF THE ATTORNEY GENERAL

DRAFT CONSTITUTION AS REVISED BY THE
DRAFTING COMMITTEE
November 3, 1949

[The clause by clause consideration of the Draft Constitution, taken up by the Constituent Assembly on November 15, 1948, was concluded on October 17, 1949. The Draft Constitution, with the amendments adopted by the Assembly, was then referred again to the Drafting Committee with instructions to carry out such renumbering of the articles, clauses and sub-clauses, such revision of punctuation and such revision and completion of the marginal notes as might be necessary, and to recommend such formal or consequential or necessary amendments to the Constitution as might be required.]

The Draft Constitution as revised by the Drafting Committee contained 395 articles and eight schedules and was submitted to the President of the Constituent Assembly on November 3, 1949. In this Draft, where words were substituted or new words inserted, they were indicated in italics and where words were omitted such omission was indicated in asterisks.

Apart from the additions, deletions and amendments incorporated in the revised Draft, the Drafting Committee gave notice of some further amendments. Notice of amendments was also given by other members of the Assembly. All these amendments were considered by the Assembly on November 14, 15 and 16, and they were put to the vote on November 16.

The Draft Constitution as revised by the Drafting Committee and submitted to the President of the Assembly on November 3, 1949 is reproduced below together with the forwarding letter.]

(I) LETTER FORWARDING THE REVISED DRAFT

NEW DELHI,
The 3rd November, 1949.

To

The Hon'ble the President,
Constituent Assembly of India,
New Delhi.

DEAR SIR,

We the undersigned members of the Drafting Committee to which the

Draft Constitution as passed by the Constituent Assembly at the second reading was referred by you under sub-rule (1) of rule 38-R of the Constituent Assembly Rules have examined the Draft Constitution and beg to submit this our Report with the Draft Constitution as revised by us annexed hereto.

2. The changes that we have recommended in the Draft Constitution fall broadly under four categories :

- (a) The renumbering of articles, clauses and sub-clauses, and the revision of punctuation;
- (b) formal and consequential alterations, such as the omission of the words "of this Constitution", the changes in the use of capital letters, the alteration of the reference to Ruler to "Rajpramukh";
- (c) certain necessary alterations proposed for making the meaning of some of the articles clearer or for filling up any lacuna in an article without making any substantial change in the content thereof ;
- (d) certain other necessary amendments, whether by way of addition of new articles or by way of revision of the existing articles to remedy the defects and omissions that the scrutiny of the Draft Constitution has revealed to us.

3. In renumbering the articles we have in certain cases changed the order in which they appeared in the Draft Constitution. We have brought the Part containing the Emergency provisions immediately after the Part containing the provisions relating to Language as we considered this arrangement to be more appropriate.

We have also changed the numbering of Parts I, II, III and IV of the First Schedule to Parts A, B, C and D respectively in order to avoid confusion with the Parts of the Draft Constitution. It was suggested to us that Part III of this Schedule containing the names and territories of Indian States and Unions of States should be brought immediately after Part I and renumbered as Part II. We have accordingly categorized Part III of the First Schedule as Part B. Changes of a similar nature in regard to numbering of Parts have also been made in the other Schedules.

We have also made changes in the order of the entries appearing in Lists I, II and III of the Seventh Schedule so as to group together the entries which are related. In some cases we have split up entries where we have considered this suitable. In other cases we have combined two entries into one. For facility of reference, both the old and new numbers of the entries have been shown in the revised Draft.

We are not making any detailed mention of the changes referred to in categories (a), (b) and (c) in paragraph 2 above. The more important changes under categories (b) and (c) and the changes under category (d) have been indicated in the revised Draft; where words have been substituted or new words inserted, they are indicated in italics, and where words have been omitted they are indicated by asterisks.

4. On the more important changes proposed by us, we would offer the following observations:

Article 5: We have removed the proviso from article 5 and made it a new article 9, so that the provisions thereof may apply to persons acquiring citizenship not only under article 5 but also under articles 6 and 8.

Article 21 (old 15): We have considered it more appropriate to split up this article into two parts and to transfer the latter part of this article dealing with "equality before law" to a new article 14 under the heading "Right to Equality".

Article 22 (old 15-A): The changes proposed in this article are of a drafting nature. The proviso to clause (3) of the original article has been converted into a new clause (4). We have felt that clauses (4) and (7) of this article as revised may create some difficulty as there would not be any law made by Parliament in force immediately on the commencement of the Constitution in accordance with which persons may be kept under detention for a period longer than three months. We have therefore proposed a new article 373 whereby power has been given to the President to issue an order in terms of clause (7) of article 22 which will have effect until the expiration of one year from the commencement of the Constitution or until Parliament takes action under the said clause, whichever is earlier.

Article 31 (old 24): We have recast clauses (4), (5) and (6) of this article but no change of substance has been made therein except in clause (6). Clause (6) has been expanded to cover certain laws relating to evacuee property passed by the Central Legislature within eighteen months before the commencement of the Constitution.

Article 34 (new): It was pointed out to us that the fundamental rights in the Constitution might prevent validation by the Legislature of acts done during the period when martial law is in force and also prevent the indemnifying of persons in the service of the Union or of a State in respect of action taken by them during such period. This new article has been suggested by us accordingly to cover this contingency.

Articles 77 (old 64) and 166 (old 146): A new clause has been added to each of these two articles for authorizing the President or the Governor, as the case may be, to make rules for the conduct of the business of the Government of India or the Government of the State, as the case may be, and for the allocation among Ministers of the said business. This power finds a specific mention in the Government of India Act, 1935, and we consider the insertion of such a clause to be necessary.

Articles 100 (old 80) and 189 (old 164): These two articles deal with the question of quorum in Parliament and in the Houses of the Legislatures of the States. The quorum was fixed at one-sixth both for Parliament and the State Legislatures. It was pointed out to us that in actual practice it might prove unworkable. In the case of the Constituent Assembly (Legislative), the provision in the Government of India Act, 1935, relating to

quorum in the Dominion Legislature was amended so as to fix the quorum at one-tenth instead of one-sixth. The analogy of the House of Commons of the Parliament of the United Kingdom was also pointed out to us where the quorum is only 40 which is less than one-fifteenth of the total strength of that House. We have accordingly proposed that until Parliament otherwise provides, the quorum in Parliament should be one-tenth of the total number of members of the House. In the case of Legislatures of States, we have provided in article 189 that until the Legislatures of the States otherwise provide the quorum should be one-tenth or ten members, whichever is greater.

Article 222 (new): We have proposed the insertion of this new article to enable the President to transfer a judge of a High Court from one High Court to another. The present provision in the Constitution would not permit of any compensatory allowance being given to judges on such transfer. Power has accordingly been reserved to Parliament to determine by law the compensatory allowance to be paid in case they are so transferred, and, until Parliament so determines, to the President to fix by order the quantum of such allowance.

Article 365 (new): In certain articles of the Constitution, such as articles 256 (old 233), 257 (old 234 and 234-A), 353 (old 276), 360 (old 280-A) and 371 (old 306-B), power has been given to the Government of India to give directions to the States in various matters, and in some of these articles it has been mentioned that the failure to give effect to those directions will be deemed to be a failure to carry on the Government of the State in accordance with the provisions of the Constitution. We felt that this particular provision should be put in a separate article and hence we have proposed the insertion of this new article.

Article 391: It has been pointed out to us that there is a possibility of a further change being made in the territories of the States mentioned in the First Schedule, and that action in this direction might be taken under the existing provisions of the Government of India Act, 1935, between the passing of the Constitution and its commencement. It is therefore felt that authority should be given to the President to take cognizance of these changes on the date when the Constitution comes into force and to make appropriate changes in the First and the Fourth Schedules. This article has accordingly been proposed to empower the President to take the necessary action.

Article 392 (old 313): A new clause (3) has been proposed for addition to this article giving power to the Governor-General to exercise the power of the President under this article in respect of the articles which will come into force on the passing of the Constitution and before its commencement.

First and Fourth Schedules: It has been decided to merge Rampur with the United Provinces on the 1st December, 1949. The reference to Rampur

has accordingly been deleted from Part C of the First Schedule and from Part C of the Fourth Schedule.

With regard to the names of three Provinces, namely, United Provinces, Central Provinces and Berar, and Assam, the provincial authorities have not yet finally suggested suitable names for insertion in the Constitution. We, therefore, request your permission, notwithstanding the provisions of rule 38-R, to allow us to propose suitable amendments in respect of the names of these three Provinces, should it become necessary, before the House assembles on the 14th November, 1949.

Second Schedule—Paragraphs 9 and 10 (Original paragraphs 10 and 11): We have recast clause (3) of paragraph 9 and clause (2) of paragraph 10 to make the intention clearer. We have also made one change of a substantial character in both these clauses, namely, the date “31st October, 1948” mentioned in these clauses has been changed to “the date of the commencement of the Constitution”. This had to be done because action taken subsequent to the 31st October, 1948, has rendered the mention of that date inconsistent with facts subsequently brought to our notice. This had also to be done to remove certain anomalies and to avoid certain practical difficulties pointed out to us.

Seventh Schedule: The general changes made in this Schedule have been mentioned by us in the earlier part of this report. Besides those changes we have made some consequential changes in the Lists and have also included a new entry “price control” in List III.

In view of the new entry relating to contempt of court inserted in List III at the second reading of the Draft Constitution, it has become necessary to provide in List I a corresponding entry relating to contempt of the Supreme Court, as obviously the Legislature of a State cannot be given power to legislate in respect of contempt of that Court.

We have also added in List II a provision giving power to the Legislature of the State to make laws with respect to the officers and servants of a High Court in view of the specific mention of the Legislature of the State in clause (2) of article 229 (old 205). We have made a corresponding modification in the entry in List I relating to the constitution and organisation of High Courts.

We have also inserted a new entry in List I with regard to the audit of the accounts of the Union and of the States in view of the provisions in article 149 (old 125).

We have included the new entry “price control” in List III to enable necessary powers to be exercised both by Parliament and by the Legislatures of the States to control prices. Article 369 (old 306) confers on Parliament power to make laws with regard to price control in respect of certain essential commodities for a period of five years. Power has been also given to Parliament to control prices of commodities produced by industries, the control of which by the Union is declared by Parliament to be expedient

in the public interest. For the sake of the economic unity and stability of the country we consider that both Parliament and the Legislatures of the States should be given power with regard to price control.

Yours truly,

B. R. AMBEDKAR
N. GOPALASWAMI AYYANGAR
A. KRISHNASWAMI AYYAR
K. M. MUNSHI
SAIYID MOHD. SAADULLA
T. T. KRISHNAMACHARI

(II) TEXT OF THE REVISED DRAFT

Preamble.

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

PART I

THE UNION AND ITS TERRITORY * * *

Name and territory of the Union.

1. (1) India, that is Bharat, shall be a Union of States.
- (2) The States and the territories thereof shall be the States and their territories specified in Parts A, B and C of the First Schedule.

(3) The territory of India shall comprise—

(a) the territories of the States ;

(b) the territories specified in Part D of the First Schedule; and

(c) such other territories as may be acquired.

Admission or establishment of new States.

2. Parliament may * * * by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

3. Parliament may by law—

- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State;

Formation of new States and alteration of areas, boundaries or names of existing States.

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the boundaries of any State or States specified in Part A or Part B of the First Schedule or the name or names of any such State or States, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President.

4. (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States * * * affected by such law) as Parliament may deem necessary.

Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

PART II

CITIZENSHIP

5. At the commencement of this Constitution, every person who has his domicile in the territory of India and—

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India.* * *

Citizenship at the commencement of the Constitution.

Rights of citizenship of certain persons who have migrated to India from Pakistan.

6. Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has *been ordinarily resident* in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in *that* behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed * * * by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Rights of citizenship of certain migrants to Pakistan.

7. Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

Rights of citizenship of certain persons of Indian origin residing outside India.

8. Notwithstanding anything in *article* 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any *country* outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before

or after the commencement of this Constitution, in the form and manner prescribed * * * by the Government of the Dominion of India or the Government of India.

9. No person shall be a citizen of India by virtue of article 5, article 6 or article 8 if he has voluntarily acquired the citizenship of any foreign State.

Persons voluntarily acquiring citizenship of a foreign State not to be citizens.

10. Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Continuance of the rights of citizenship.

11. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Parliament to regulate the right of citizenship by law.

PART III

FUNDAMENTAL RIGHTS

General

12. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Definition.

13. (1) All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

Laws inconsistent with or in derogation of the fundamental rights.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed,

notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Right to Equality

Equality before law.

14. *The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

Equality of opportunity in matters of public employment.

16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office under any State specified in the first Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens *which*, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body

thereof shall be person professing a particular religion or belonging to a particular denomination.

17. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Abolition of untouchability.

18. (1) No title, not being a military or academic distinction, shall be conferred by the State.

Abolition of titles.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument * * * or office of any kind from or under any foreign State.

Right to Freedom

19. (1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

Protection of certain rights regarding freedom of speech, etc.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions

on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and in particular nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing, or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

Protection in respect of conviction for offences.

20. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Protection of life and personal liberty.

Protection against arrest and detention in certain cases.

21. No person shall be deprived of his life or personal liberty except according to procedure established by law
* * *

22. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

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(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention; or

(b) such person is detained in accordance with the provisions of any law made by Parliament under clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person may be detained for a period longer than three months under any law providing for preventive detention, and also the maximum period for which any person may be detained under such law, and Parliament may further prescribe by law the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

Right Against Exploitation

23. (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Prohibition of traffic in human beings and forced labour.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes and in imposing such service the State shall not make any discrimination on grounds only of *religion, race, caste or class or any of them.*

Prohibition of employment of children in factories, etc.

24. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion

Freedom of conscience and free profession, practice and propagation of religion.

25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice ;

(b) *providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.*

Explanation I : The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II : In sub-clause (b) of clause (2), the reference to *Hindus* shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to *Hindu religious institutions* shall be construed accordingly.

Freedom to manage religious affairs.

26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes ;

(b) to manage its own affairs in matters of religion ;

(c) to own and acquire movable and immovable property ; and

(d) to administer such property in accordance with law.

Freedom as to payment of taxes for promotion of any particular religion.

27. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) *Nothing in clause (1)* shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Cultural and Educational Rights

29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Protection of interests of minorities.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Right of minorities to establish and administer educational institutions.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Right to Property

31. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property.

(2) No property, movable or immovable including any interest in or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution before the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise with respect to property declared by law to be evacuee property.

(6) Any law of a State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted * * * to the President for its certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.

Right to Constitutional Remedies

32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the

*Remedies
for enforce-
ment of
rights con-
ferred by
this Part.*

Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

33. Parliament may by law determine to what extent any of the rights conferred by this Part shall in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Power to Parliament to modify the rights conferred by this Part in their application to Forces.

34. Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Restriction on rights conferred by this Part while martial law is in force in any area.

35. Notwithstanding anything * * * in this Constitution,—

Legislation to give effect to the provisions of this Part.

(a) Parliament shall have, and the Legislature of a State specified in Part A or Part B of the First Schedule shall not have, power to make laws—

(i) with respect to any of the matters which, under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India * * * with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause, shall, subject to the terms thereof and to any adaptations and modifications that may be

made therein under article 372 continue in force * * *
until altered or repealed or amended by Parliament.

Explanation: In this article the expression "law in force" has the same meaning as in article 372.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

Definition.

36. In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

Application of the principles contained in this Part.

37. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

State to secure a social order for the promotion and welfare of the people.

38. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Certain principles of policy to be followed by the State.

39. The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that childhood and youth are protected against exploitation and against moral and material abandonment.

Organisation of village panchayats.

40. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Right to work, to education and to public assistance in certain cases.

42. The State shall make provision for securing just and humane conditions of work and for maternity relief.

Provision for just and humane conditions of work and maternity relief.

43. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Living wage, etc. for workers.

44. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Uniform civil code for the citizens.

45. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Provision for free and compulsory education for children.

46. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption *except for medicinal purposes* of intoxicating drinks and of drugs which are injurious to health * * *.

Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

48. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for *improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter.*

Organisation of agriculture and animal husbandry.

Protection, preservation and maintenance of monuments and places and objects of national importance.

Separation of judiciary from executive.

Promotion of international peace and security.

49. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest declared by Parliament by law to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

50. The State shall take steps to separate the judiciary from the executive in the public services of the State.

51. The State shall endeavour to—

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

PART V

THE UNION

Chapter I—The Executive

The President and Vice-President

The President of India. Executive power of the Union.

52. There shall be a President of India.

53. (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution * * *.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

- (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or
- (b) prevent Parliament from conferring by law functions on authorities other than the President.

54. The President shall be elected by the members of an electoral college consisting of—

- (a) the elected members of both Houses of Parliament; and

Election of President.

- (b) the elected members of the *Legislative Assemblies* of the States.

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55. (1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

*Manner of
election of
President.*

(2) For the purpose of securing such uniformity *among the States inter se as well as parity between the States as a whole and the Union*, the number of votes which each elected member of Parliament and of the *Legislative Assembly* of each State is entitled to cast at such election shall be determined in the following manner:

- (a) every elected member of the *Legislative Assembly* of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the *Assembly*;
 - (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;
 - (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the *Legislative Assemblies* of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.
- (3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation: In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

56. (1) The President shall hold office for a term of five years from the date on which he enters upon his office: Provided that—

*Term of
office of
President.*

- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;
- (b) the President may, for violation of the Constitution,

be removed from office by impeachment in the manner provided in article 61;

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

*Eligibility
for re-election.*

57. A person who holds, or who has held, office as President shall, *subject to the other provisions of this Constitution*, be eligible for re-election to that office.

*Qualifications
for election
as President.*

58. (1) No person shall be eligible for election as President unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation : For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uparajpramukh of any State or is a Minister either for the Union or for any State.

*Condition of
President's
office.*

59. (1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and there shall be paid to the President such emoluments and allowances as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

60. Every President and every person acting as President or discharging the functions of the President shall before entering upon his office make and subscribe in the presence of the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say—

Oath or affirmation by the President.

"I, A. B., do swear in the name of God solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

61. (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

Procedure for impeachment of the President.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

62. (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

Time of holding election to fill vacancy in the office of President and

(2) An election to fill a vacancy in the office of President

the term of office of person elected to fill casual vacancy.

The Vice-President of India.

The Vice-President to be ex-officio Chairman of the Council of States.

The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or the absence of President.

Election of Vice-President.

occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy ; and the person elected to fill the vacancy shall, *subject to the provisions of article 56*, be entitled to hold office for the full term of five years *from the date on which he enters upon his office.*

63. There shall be a Vice-President of India.

64. The Vice-President shall be *ex-officio* Chairman of the Council of States and shall not hold any other office of profit :

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

65. (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such privileges, emoluments and allowances as may be determined by Parliament by law and, until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule.

66. (1) The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament

or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uparajpramukh of any State or is a Minister either for the Union or for any State.

67. The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) a Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office

* * * *

by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

68. (1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill such vacancy shall, *subject to the provisions of article 67*, be

Term of office of Vice-President.

Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.

entitled to hold office for the full term of five years from the date on which he enters upon his office.

Oath or affirmation by the Vice-President before entering office.

69. Every Vice-President shall before entering upon his office make and, subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say—

"I, A. B., do ^{swear in the name of God} _{solemnly affirm} that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

Discharge of President's functions in other contingencies.

70. Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

Matters relating to or connected with the election.

71. (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

Power of President to grant pardons, etc. and to suspend, remit or commute sentences in certain cases.

72. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death

exercisable by the Governor or Rajpramukh of a State under any law for the time being in force.

73. (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

Extent of executive power of the Union.

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement :

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Council of Ministers

74. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

Council of Ministers to aid and advise President.

(2) The question whether any, and if so what advice was tendered by Ministers to the President shall not be inquired into in any court.

75. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

Other provisions as to Ministers.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who, for any period of six consecutive months, is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and,

until Parliament so determines, shall be as specified in the Second Schedule.

Attorney-General for India.

The Attorney-General for India

76. (1) The President shall appoint a person, who is qualified to be appointed a judge of the Supreme Court, to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

Conduct of Government Business

Conduct of business of the Government of India.

77. (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) *The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.*

Duties of Prime Minister as respects the furnishing of information to the President, etc.

78. It shall be the duty of the Prime Minister—

(a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the Council of Ministers any matter

on which a decision has been taken by a Minister but which has not been considered by the Council.

Chapter II—Parliament

General

79. There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

Constitution of Parliament.

80. (1) The Council of States shall consist of—* * *

Composition of the Council of States.

(a) twelve members *to be nominated by the President in accordance with the provisions of clause (3); and*

(b) *not more than two hundred and thirty-eight representatives of the States.*

(2) The allocation of seats * * * in the Council of States *to be filled by representatives of the States* shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:

Literature, science, art and social service.

(4) *The representatives of each State specified in Part A or Part B of the First Schedule in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.*

(5) The representatives of the States specified in Part C of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

81. (1) (a) Subject to the provisions of *clause (2) and of article 331*, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States.

Composition of the House of the People.

(b) For the purpose of sub-clause (a), the States shall be divided, grouped or formed into territorial constituencies and the number of *members* to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one *member* for every 750,000 of the population and not more than one *member* for every 500,000 of the population.

(c) The ratio between the number of *members* allotted to each territorial constituency and the population of that constituency as ascertained at the last preceding census of

which the relevant figures have been published shall, so far as practicable, be the same throughout *the territory of India*.

(2) The representation in the House of the People of the territories comprised within the territory of India but not included within any State shall be such as Parliament may by law provide.

(3) Upon the completion of each census, the representation * * * of the several territorial constituencies in the House of the People shall * * * be readjusted by such authority, in such manner and with effect from such date as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House.

Special provision as to representation of States in Part C and territories other than States.

82. Notwithstanding anything in clause (1) of article 81, Parliament may by law provide for the representation in the House of the People of any State specified in Part C of the First Schedule or of any territories comprised within the territory of India but not included within any State on a basis or in a manner other than that provided in that clause.

Duration of Houses of Parliament.

83. (1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

Qualification for membership of Parliament.

84. A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

- (a) is a citizen of India;
- (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and
- (c) possesses such other qualifications as may be

prescribed in this behalf by or under any law made by Parliament.

85. (1) The Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

Sessions of Parliament, prorogation and dissolution.

(2) Subject to the provisions of *clause (1)*, the President may from time to time—

(a) summon the Houses or either House to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People.

86. (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

Right of President to address and send messages to Houses.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

87. (1) At the commencement of every session the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

Special address by the President at the commencement of each session.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

88. Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Rights of Ministers and Attorney-General as respects Houses.

Officers of Parliament

89. (1) The Vice-President of India shall be *ex-officio* Chairman of the Council of States.

The Chairman and Deputy Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof.

Vacation and resignation of, and removal from the office of Deputy Chairman.

90. A member holding office as Deputy Chairman of the Council of States—

- (a) shall vacate his office if he ceases to be a member of the Council;
- (b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and
- (c) may be removed from his office * * * by a resolution of the Council passed by a majority of all the then members of the Council :

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Power of the Deputy Chairman or other persons to perform the duties of the office of, or to act as, Chairman.

91. (1) While the office of Chairman is vacant; or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States, the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

92. (1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be the Deputy Chairman, is absent.

(2) *The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or any other matter during such proceedings.*

The Speaker and Deputy Speaker

93. The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker

and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

of the House of the People.

94. A member holding office as Speaker or Deputy Speaker of the House of the People—

Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office * * * by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

95. (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

Power of the Deputy Speaker or other persons to perform the duties of the office of, or to act as, Speaker.

(2) During the absence of the Speaker from any sitting of the House of the People, the Deputy Speaker or if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

96. (1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent.

The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

(2) *The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of*

the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes.

Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.

97. There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law, and until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Secretariat of Parliament.

98. (1) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

Oath or affirmation by members.

99. Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Voting in Houses; power of Houses to act notwithstanding vacancies and quorum.

100. (1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than *the Speaker or person acting as Chairman or Speaker.*

The Chairman or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a House, *there is no quorum*, it shall be the duty of the Chairman or Speaker or person acting as such either to adjourn the House, or to suspend the meeting until *there is a quorum*. *Until Parliament by law otherwise provides the quorum shall be one-tenth of the total number of members of the House.*

Disqualifications of Members

101. (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

*Vacation of
seats.*

(2) No person shall be a member both of Parliament and of *a House* of the Legislature of a State specified in Part A or Part B of the First Schedule, and if a person is chosen a member both of Parliament and of *a House* of the Legislature of such a State, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of article 102; or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

102. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

*Disqualifica-
tions
for membership.*

(a) if he holds any office of profit under the Government of India or the Government of any State other

than an office declared by Parliament by law not to disqualify its holder ;

(b) if he is of unsound mind and stands so declared by a competent court ;

(c) if he is an undischarged insolvent ;

(d) if he *is not* a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State ;

(e) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

Decision on questions as to disqualifications of members.

103. (1) If any question arises as to whether a member of either House of Parliament has been subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

Penalty for sitting and voting before making declaration under article 99 or when not qualified or when disqualified.

104. If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 99, or when he knows that he is not qualified, or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Government of India.

Powers, Privileges and Immunities of Parliament and its Members

Powers, Privileges etc., of the Houses of Parliament and of the members and committees thereof.

105. (1) Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the *powers, privileges and immunities* of each House of Parliament and of the members and the committees of each House shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

106. Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of India.

Salaries and allowances of members.

Legislative Procedure

107. (1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

Provisions as to introduction and passing of Bills.

(2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People or which having been passed by the House of the People is pending in the Council of States shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.

108. (1) If after a Bill has been passed by one House and transmitted to the other House—

Joint sitting of both Houses in certain cases.

(a) the Bill is rejected by the other House ; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill ; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill :

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any *period* during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed ;

and the decision of the person presiding as to the

amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

109. (1) A Money Bill shall not be introduced in the Council of States.

Special procedure in respect of Money Bills.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

110. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely—

Definition of "Money Bills".

(a) the imposition, abolition, remission, alteration or regulation of any tax ;

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to

- any financial obligations undertaken or to be undertaken by the Government of India ;
- (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund ;
- (d) the appropriation of moneys out of the Consolidated Fund of India ;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure ;
- (f) the receipt of money on account of the Consolidated Fund of India or the *public account of India or the* custody or issue of such money or the audit of the accounts of the *Union or of a State*; or
- (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Assent to Bills.

111. When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and *when a Bill is so returned*, the Houses shall reconsider

the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

Procedure in Financial Matters

112. (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for the year, in this Part referred to as the "annual financial statement".

*Annual
financial
statement.*

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and
- (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India—

- (a) the emoluments and allowances of the President and other expenditure relating to his office;
- (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;
- (c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court;
- (ii) the pensions payable to or in respect of Judges of the Federal Court;
- (iii) the pension payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in a Province corresponding to a State specified in Part A of the

First Schedule ;

- (e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India ;
- (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

*Procedure in
Parliament with
respect to esti-
mates.*

113. (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

*Appropriation
Bills.*

114. (1) As soon as may be after the grants under article 113 have been made by the House of the People there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

- (a) the grants so made by the House of the People; and
- (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

*Supplementary,
additional or
excess grants.*

115. (1) The President shall—

- (a) if the amount authorised by any law made in

accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

(2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.

116. (1) Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power—

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure;
- (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
- (c) to make an exceptional grant which forms no part of the current service of any financial year;

Votes on account, votes on credit and exceptional grants.

and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

(2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

Special provisions as to financial Bills.

117. (1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

Procedure Generally

Rules of procedure.

118. (1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of

the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside.

119. Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.

Regulation by law of procedure in Parliament in relation to financial business.

120. (1) Notwithstanding anything in Part XVII but subject to the provisions of article 348, business in Parliament shall be transacted in Hindi or in English:

Language to be used in Parliament.

Provided that the Chairman of the Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

121. No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

Restriction on discussion in Parliament.

122. (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

Courts not to inquire into proceedings of Parliament.

(2) No officer or * * * member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Power of President to promulgate Ordinances during recess of Parliament.

Chapter III—Legislative Powers of the President

123. (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation : Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

Chapter IV—The Union Judiciary

Establishment and constitution of Supreme Court.

124. (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India shall always be consulted :

Provided further that—

(a) a Judge may, by writing under his hand addressed

to the President, resign his office ;

(b) a Judge may be removed from his office in the manner provided in clause (4).

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession ; or

(c) is *in the opinion of the President* a distinguished jurist.

Explanation I: In this clause "High Court" means a High Court which exercises, or which *at any time* before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II: In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person held judicial office not inferior to that of a district judge after he became an advocate, shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

125. (1) There shall be paid to the Judges of the Supreme Court such salaries as are specified in the Second Schedule.

*Salaries etc.
of Judges.*

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

*Appointment
of acting
Chief Justice.*

126. When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

*Appointment of
ad hoc Judges.*

127. (1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be *designated* by the Chief Justice of India.

(2) It shall be the duty of the Judge, who has been so *designated*, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

*Attendance of
retired Judges
at sittings of the
Supreme Court.*

128. Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this article shall be deemed

to require any such person as aforesaid to sit and act as a judge of that Court unless he consents so to do.

129. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Supreme Court to be a court of record.

130. The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

Seat of Supreme Court.

131. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

Original jurisdiction of the Supreme Court.

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to—

(i) a dispute to which a State specified in Part B of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution and has, or has been, continued in operation after such commencement;

(ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which provides that the said jurisdiction shall not extend to such a dispute.

132. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

Appellate jurisdiction of Supreme Court in appeals from High Courts in States in certain cases.

(2) Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that

the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground.

Explanation: For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

Appellate jurisdiction of Supreme Court in appeals from High Courts in the territory of India in other cases.

133. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

- (a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or
- (b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or
- (c) that the case is a fit one for appeal to the Supreme Court;

and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law:

Provided that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

Appellate jurisdiction of Supreme Court in regard to criminal matters.

134. (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

- (a) * * * has on appeal reversed the order of acquittal

- of an accused person and sentenced him to death ; or
- (b) * * * has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death ; or
- (c) * * * certifies that the case is a fit one for appeal to the Supreme Court :

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

135. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to *any matter, not being a matter referred to in any of the foregoing provisions of this Chapter, if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.*

Jurisdiction and powers of the Federal Court under existing law in certain cases to be exercisable by the Supreme Court.

136. (1) The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

Special leave to appeal by the Supreme Court.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

137. Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Review of judgments or orders by the Supreme Court.

138. (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

Enlargement of the jurisdiction of the Supreme Court.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law

provides for the exercise of such jurisdiction and powers by the Supreme Court.

Conferment on the Supreme Court of powers to issue certain writs.

139. Parliament may, by law, confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them for any purposes other than those mentioned in clause (2) of article 32.

Ancillary powers of Supreme Court.

140. Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

Law declared by Supreme Court to be binding on all courts.

141. The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Enforcement of decrees and orders of Supreme Court and orders as to discovery etc.

142. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and until provision in that behalf is so made in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Power of President to consult Supreme Court.

143. (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in clause (i) of the proviso to article 131, refer a dispute of

the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court *shall*, after such hearing as it thinks fit, report to the President its opinion thereon.

144. All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Civil and judicial authorities to act in aid of the Supreme Court. Rules of Court, etc.

145. (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

- (a) rules as to the person practising before the Court;
- (b) rules as to the procedure for hearing appeals and other matters *pertaining to such appeals* including the time within which appeals to the Court are to be entered ;
- (c) *rules as to the proceedings in the Court for the enforcement of the rights conferred by Part III;*
- (d) *rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134 ;*
- (e) rules as to the *conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review* including the time within which applications to the Court for such review are to be entered ;
- (f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein ;
- (g) rules as to the granting of bail ;
- (h) rules as to stay of proceedings ;
- (i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay ;
- (j) *rules as to the procedure for inquiries referred to in clause (1) of article 317.*

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial

question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that where the Court hearing an appeal under *any of the provisions of this Chapter other than article 132* consists of less than five Judges and in the course of the hearing of the appeal the court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such court shall refer the question *for opinion* to a court constituted *as required by this clause for the purpose of deciding any case involving such a question* and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

Officers and servants and the expenses of the Supreme Court.

146. (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances, and pensions payable to

or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

147. In this Chapter and in Chapter V of Part VI references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (*including any enactment amending or supplementing that Act*), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

Interpretation.

Chapter V—Comptroller and Auditor-General of India

148. (1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

Comptroller and Auditor-General of India.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary * * * and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and until they are so determined shall be as specified in the Second Schedule :

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of any law made by Parliament, the conditions of service of *persons serving in the office* of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General :

Provided that the rules made under this clause shall,

so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(6) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

Duties and powers of the Comptroller and Auditor-General.

149. The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as * * * may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

Power of Comptroller and Auditor-General of India to give directions as to accounts.
Audit reports.

150. The accounts of the Union and of the States shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe. * * *

151. (1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor, or the Rajpramukh of the State, who shall cause them to be laid before the Legislature of the State.

PART VI

THE STATES IN PART A OF THE FIRST SCHEDULE

Chapter I—General

Definition.

152. In this Part, unless the context otherwise requires, the expression "State" means a State specified in Part A of the First Schedule.

*Chapter II—The Executive**The Governor*

153. There shall be a Governor for each State.

Governors of States.

154. (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with *this Constitution*.

Executive power of State.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

155. The Governor of a State shall be appointed by the President by warrant under his hand and seal.

Appointment of Governor.

156. (1) The Governor shall hold office during the pleasure of the President.

Term of office of Governor.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office;

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

157. No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

Qualifications for appointment as Governor.

158. (1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

Conditions of Governor's office.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences, and there shall be paid to the Governor such emoluments and allowances as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

Oath or affirmation by the Governor.

159. Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State or, in his absence, the senior-most Judge of that Court available, an oath or affirmation in the following form, that is to say—

"I, A.B., do swear in the name of God that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of _____ (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of _____ (name of the State)."

Discharge of the functions of the Governor in certain contingencies.

160. The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

161. The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence, of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Extent of executive power of State.

162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Government of India or authorities thereof.

Council of Ministers

Council of Ministers to aid and advise Governor.

163. (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is

not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

164. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the Governor:

*Other provisions
as to Ministers.*

Provided that in the States of Bihar, Koshal Vidarbha and Orissa there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

The Advocate-General for the State

165. (1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court, to be Advocate-General for the State.

*Advocate-
General
for the State.*

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution

or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine.

Conduct of Government Business

Conduct of business of the Government of a State.

166. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

Duties of Chief Minister as respects the furnishing of information to Governor, etc.

167. It shall be the duty of the Chief Minister of each State—

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Chapter III—The State Legislature

General

Constitution of Legislatures in States.

168. (1) For every State there shall be a Legislature which shall consist of the Governor, and

(a) in the States of Madras, Bombay, Bengal, the United Provinces, Bihar and Punjab, two Houses,

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly and where there is

only one House, it shall be known as the Legislative Assembly.

169. (1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

*Abolition or
creation of
Legislative
Councils
in States.*

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such *supplemental*, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

170. (1) Subject to the provisions of article 333, the Legislative Assembly of each State shall be composed of members chosen by direct election.

*Composition of
the Legislative
Assemblies.*

(2) The representation of each territorial constituency in the Legislative Assembly of a State shall be on the basis of the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published and shall, save in the case of the autonomous districts of Assam and the constituency comprising the cantonment and municipality of Shillong, be on a scale of not more than one *member* for every seventy-five thousand of the population.

Provided that the total number of members in the Legislative Assembly of a State shall in no case be more than five hundred or less than sixty.

(3) The ratio between the number of members to be allotted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the State.

(4) Upon the completion of each census, the representation of the several territorial constituencies in the Legislative Assembly of each State shall * * * be readjusted by such authority, in such manner and with

effect from such date as Parliament may by law determine :

Provided that such readjustment shall not affect representation *in* the Legislative Assembly until the dissolution of the then existing Assembly.

*Composition of
the Legislative
Councils.*

171. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-fourth of the total number of members in the Legislative Assembly of that State :

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities *in the State* as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India *or have been for at least three years in possession of* qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university ;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament ;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor *in accordance with the provisions of clause (5).*

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament; and the elections under the said

sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

Literature, science, art, co-operative movement and social service.

172. (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting *and no longer* and the expiration of the said period of five years shall operate as a dissolution of the Assembly :

*Duration
of State
Legislatures.*

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by *Parliament* by law.

173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

*Qualification
for member-
ship of the
State Legis-
lature.*

(a) is a citizen of India;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by *Parliament*.

174. (1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

*Sessions of the
State Legis-
lature, pro-
rogation and
dissolution.*

(2) Subject to the provisions of clause (1), the Governor may from time to time—

(a) summon the House or either House to meet at such time and place as he thinks fit;

(b) prorogue the House or Houses;

Right of Governor to address and send messages to the Houses.

Special address by the Governor at the commencement of every session.

Rights of Ministers and Advocate-General as respects the Houses.

The Speaker and Deputy Speaker of the Legislative Assembly.

Vacation and resignation of, and removal from, office of Speaker and Deputy Speaker.

(c) dissolve the Legislative Assembly.

175. (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

176. (1) At the commencement of every session, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

177. Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, * * * and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of the State Legislature

178. Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

179. A member holding office as Speaker or Deputy Speaker of an Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy

Speaker; to the Speaker, resign his office; and
(c) may be removed from his office * * * by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

180. (1) While the office of Speaker is vacant the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant by such member of the Assembly as the Governor may appoint for the purpose.

Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.

(2) During the absence of the Speaker from any sitting of the Assembly, the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

181. (1) At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

The Speaker and the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

(2) *The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes.*

182. The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of

The Chairman and Deputy Chairman of the Legislative Council.

Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

Vacation and resignation of, and removal from, the office of Chairman and Deputy Chairman.

183. A member holding office as Chairman or Deputy Chairman of a Legislative Council—

- (a) shall vacate his office if he ceases to be a member of the Council;
- (b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and
- (c) may be removed from his office * * * by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

184. (1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council, the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

185. (1) At any sitting of the Legislative Council of a State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 184 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) *The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter*

during such proceedings but not in the case of equality of votes.

186. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law, and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.

187. (1) The House or each House of the Legislature of a State shall have a separate secretarial staff:

Secretarial staff of State Legislatures.

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

188. Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Oath or affirmation by members.

189. (1) Save as otherwise provided in this Constitution, all questions at any sitting of a House * * * of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman or person acting as such.

Voting in Houses; power of Houses to act notwithstanding vacancies and quorum.

The Speaker or Chairman or person acting as such shall not vote in the first instance but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Legislature of a State shall have

power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman or person acting as such either to adjourn the House or to suspend the meeting until there is a quorum.

The quorum shall, until the Legislature of the State by law otherwise provides, be ten members or one-tenth of the total number of members of the House, whichever is greater.

Disqualifications of Members

*Vacation of
seats.*

190. (1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of article 191; or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

191. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

Disqualifications for membership.

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he *is not* a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by the Legislature of the State.

(2) For the purposes of this article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for India or for any such State.

192. (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

Decision on questions as to disqualifications of members.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

193. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law made by the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Penalty for sitting and voting before making declaration under article 188 or when not qualified or when disqualified.

Powers, Privileges and Immunities of State Legislatures and their Members

194. (1) Subject to the rules and standing orders

Powers,

*privileges,
etc., of the
Houses of
Legislatures
and of
the members,
and committees
thereof.*

regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the *powers, privileges and immunities* of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of the Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

*Salaries and
allowances of
members.*

195. Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the *Legislative Assembly of the corresponding Province*.

Legislative Procedure

*Provisions as to
introduction
and passing
of Bills.*

196. (1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(2) Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall

not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

197. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council; or

(b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the Legislative Assembly may, *subject to the rules regulating its procedure*, pass the Bill *again* in the same or in any subsequent session with or without *such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.*

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council; or

(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly *for the second time* with such amendments, if any, as have been *made or suggested by the Legislative Council and agreed to by the Legislative Assembly.*

(3) Nothing in this article shall apply to a Money Bill.

198. (1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it

Restriction of powers of Legislative Council as to Bills other than Money Bills.

Special procedure in respect of Money Bills.

shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

Definition of
"Money Bills".

199. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely—

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
- (c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;
- (d) the appropriation of moneys out of the Consolidated Fund of the State;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;

- (f) the receipt of money on account of the Consolidated Fund of the State or the *public account of the State* or the custody or issue of such money * * *; or
- (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

200. *When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:*

*Assent to
Bills.*

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President,

any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

*Bills reserved
for considera-
tion.*

201. When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that where the Bill is not a Money Bill the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by *the House or Houses* with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

*Annual
financial
statement.*

202. (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State; and
- (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State—

- (a) the emoluments and allowances of the Governor and other expenditure relating to his office;
- (b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;
- (c) debt charges for which the State is liable including

- interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;
- (d) expenditure in respect of the salaries and allowances of Judges of any High Court ;
 - (e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;
 - (f) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

203. (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of *any of those estimates.*

Procedure in Legislature with respect to estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

204. (1) As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State all moneys required to meet—

Appropriation Bills.

- (a) the grants so made by the Assembly ; and
- (b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of

the State except under appropriation made by law passed in accordance with the provisions of this article.

*Supplementary,
additional or
excess grants.*

205. (1) The Governor shall—

(a) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of articles 202, 203 and 204 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

*Votes on
account, votes
on credit
and exceptional
grants.*

206. (1) Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power—

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 203 for the voting of such grant and the passing of the law in accordance with the provisions of article 204 in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character

of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year;

and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of articles 203 and 204 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

207. (1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

Special provisions as to financial Bills.

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Procedure Generally

208. (1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

Rules of Procedure.

(2) Until rules are made under clause (1), the rules of

procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the *corresponding Province* shall have effect in relation to the Legislature of *the State* subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

Regulation by law of procedure in the Legislature of the State in relation to financial business.

209. The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail.

Language to be used in the Legislature.

210. (1) Notwithstanding anything in Part XVII but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English :

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State *by law* otherwise provides this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

Restriction on discussion in the Legislature.

211. No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

212. (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

Courts not to inquire into proceedings of the Legislature.

(2) No officer or * * * member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Chapter IV—Legislative Power of the Governor

213. (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require :

Power of Governor to promulgate Ordinances during recess of Legislature.

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

- (a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature ; or*
- (b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President ; or*
- (c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it has received the assent of the President.*

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

- (a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on

the resolution being agreed to by the Council ; and
(b) may be withdrawn at any time by the Governor.

Explanation : Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void :

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

Chapter V—The High Courts in the States

*High Courts
for States.*

214. (1) There shall be a High Court for each State.

(2) For the purposes of this Constitution the High Court *exercising jurisdiction in relation to* any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

(3) The provisions of this Chapter shall apply to every High Court referred to in this article.

*High Courts
to be courts
of record.*

215. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

*Constitution of
High Courts.*

216. Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint:

Provided that the Judges so appointed shall at no time exceed in number such maximum *number* as the President may, from time to time by order, fix in relation to that Court.

*Appointment
and conditions
of the office
of a Judge
of a
High Court.*

217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a Judge other than the Chief Justice,

the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years :

Provided that—

- (a) a Judge may, by writing under his hand addressed to the *President*, resign his office;
 - (b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;
 - (c) the office of (a) Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or of any other High Court in any State specified in the First Schedule.
- (2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

- (a) has for at least ten years held a judicial office in the territory of India ; or
- (b) has for at least ten years been an advocate of a High Court in any State specified in the First Schedule or of two or more such Courts in succession.

Explanation : For the purposes of this clause—

- (a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which a person held judicial office after he became an advocate ;
- (b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area as the case may be.

218. The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

219. Every person appointed to be a Judge of a High Court in a State shall, before he enters upon his office,

Application of certain provisions relating to Supreme Court to High Courts.

Oath or affirmation by Judges

*of High
Courts.*

make and subscribe before the Governor of the State or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Third Schedule.

*Prohibition of
practising in
courts or before
any authority
by Judges.*

220. No person who has held office as a Judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India.

*Salaries etc. of
Judges.*

221. (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

*Transfer of a
Judge from one
High Court
to another.*

222. (1) *The President may transfer a Judge from one High Court to any other High Court within the territory of India.*

(2) *When a Judge is so transferred, he shall, during the period he serves as a Judge of the other Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and until so determined, such compensatory allowance as the President may by order fix.*

*Appointment of
acting Chief
Justice.*

223. When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

*Attendance of
retired judges at
sittings of
High Courts.*

224. Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges

of, but shall not otherwise be deemed to be, a Judge of that *High Court*:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that *High Court* unless he consents so to do.

225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :

*Jurisdiction
of existing
High Courts.*

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

226. (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

*Power of High
Courts to issue
certain writs.*

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

227. (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

*Power of super-
intendence over
all courts by the
High Court.*

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

- (a) call for returns from such courts ;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ; and
- (c) prescribe forms in which books, entries and

accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

*Transfer of
certain cases to
High Court.*

228. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

*Officers and
servants and
the expenses of
High Courts.*

229. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court * * * shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

230. Parliament may by law—

- (a) extend the jurisdiction of a High Court to, or
- (b) exclude the jurisdiction of a High Court from, any State other than, or any area not within, the State in which the High Court has its principal seat.

Extension of or exclusion from the jurisdiction of High Courts.

231. Where a High Court exercises jurisdiction in relation to any area outside the State in which it has its principal seat, nothing in this Constitution shall be construed—

- (a) as empowering the Legislature of the State in which the Court has its principal seat to increase, restrict or abolish that jurisdiction;
 - (b) as empowering the Legislature of a State specified in Part A or Part B of the First Schedule in which any such area is situate, to abolish that jurisdiction ;
- or

Restrictions on the power of the Legislatures of States to make laws with respect to jurisdiction of a High Court in a State having jurisdiction outside that State.

- (c) as preventing the Legislature having power to make laws in that behalf for any such area, from passing, subject to the provisions of clause (b), such laws with respect to the jurisdiction of the Court in relation to that area as it would be competent to pass if the principal seat of the Court were in that area.

232. Where a High Court exercises jurisdiction in relation to more than one State or in relation to a State and an area not forming part of the State—

Interpretation.

- (a) references in this Chapter to the Governor in relation to the Judges of a High Court shall be construed as references to the Governor of the State in which the Court has its principal seat ;
- (b) the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor or the Rajpramukh of the State in which the subordinate court is situate, or if it is

situate in an area not forming part of any State specified in Part A or Part B of the First Schedule, by the President ; and

- (c) references to the Consolidated Fund of the State shall be construed as references to the Consolidated Fund of the State in which the Court has its principal seat.

Chapter VI—Subordinate Courts

Appointment of district judges.

233. (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Recruitment of persons other than district judges to the judicial service.

234. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court.

Control over subordinate courts.

235. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

Interpretation.

236. In this Chapter—

(a) the expression “district judge” includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

(b) the expression “judicial service” means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

237. The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

Application of the provisions of this Chapter to certain class or classes of magistrates.

PART VII

THE STATES IN PART B OF THE FIRST SCHEDULE

238. The provisions of Part VI shall apply in relation to the States specified in Part B of the First Schedule as they apply in relation to the States specified in Part A of that Schedule subject to the following modifications and omissions, namely :

Application of provisions of Part VI to States in Part B of the First Schedule.

(1) For the word "Governor" wherever it occurs in the said Part VI, except where it occurs for the second time in clause (b) of article 232, the word "Rajpramukh" shall be substituted.

(2) In article 152, for the word and letter "Part A" the word "becomes" shall be substituted ;

(3) Articles 155, 156 and 157 shall be omitted.

(4) In article 158,—

(a) in clause (1), for the words "be appointed" the word "becomes" shall be substituted ;

(b) for clause (3), the following clause shall be substituted, namely :

"(3) *The Rajpramukh shall, unless he has his own residence in the principal seat of Government of the State, * * * be entitled to the use of an official residence without payment of rent, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine.*";

(c) in clause (4), the words "emoluments and" shall be omitted.

(5) In article 159, after the words "senior most Judge of that Court available" the words "or in such other manner as may be prescribed in that behalf by the President" shall be inserted.

- (6) In article 164, the proviso to clause (1) shall be omitted.
- (7) in article 168, for clause (1) the following clause shall be substituted, namely :
 - “(1) For every State there shall be a Legislature which shall consist of the Rajpramukh and—
 - (a) in the State of Mysore, two Houses;
 - (b) in other States, one House.”
- (8) In article 186, for the words “as are specified in the Second Schedule” the words “as the Rajpramukh may determine” shall be substituted.
- (9) In article 195, for the words “as were immediately before the commencement of this Constitution applicable in the case of members of the *Legislative Assembly of the corresponding Province*” the words “as the Rajpramukh may determine” shall be substituted.
- (10) In clause (3) of article 202—
 - (a) for sub-clause (a), the following sub-clause shall be substituted, namely :
 - “(a) the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order;”
 - (b) for sub-clause (f) the following sub-clauses shall be substituted, namely :
 - “(f) in the case of the State of Travancore-Cochin, a sum of fifty-one lakhs of rupees required to be paid annually to the Devaswom fund under the covenant entered into before the commencement of this Constitution by the Rulers of the Indian States of Travancore and Cochin for the formation of the United State of Travancore and Cochin ;
 - (g) *any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged”.*
- (11) In article 208, for clause (2), the following clause shall be substituted, namely :
 - “(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the State or, where no House of the Legislature for the State existed, the rules of procedure and

standing orders in force immediately before such commencement with respect to the Legislative Assembly of such Province, as may be specified in that behalf by the Rajpramukh of the State, shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be."

(12) In clause (2) of article 214, for the word "Province" the words "Indian State" shall be substituted.

(13) For article 221, the following article shall be substituted, namely :

"221. (1) There shall be paid to the Judges of each High Court such salaries as may be determined by the President after consultation with the Rajpramukh.

*Salaries, etc.
of Judges.*

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as may be determined by the President in consultation with the Rajpramukh:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

PART VIII

THE STATES IN PART C OF THE FIRST SCHEDULE

239. (1) Subject to the other provisions of this Part, a State specified in Part C of the First Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State :

*Administration
of States in
Part C of
the First
Schedule.*

Provided that the President shall not act through the Government of a neighbouring State save after—

(a) consulting the Government concerned ; and

(b) ascertaining in such manner as the President considers most appropriate the views of the people of the State to be so administered.

(2) In this article, references to a State shall include references to a part of a State.

Creation or continuance of local Legislatures or Council of Advisers or Ministers.

240. (1) Parliament may by law create or continue for any State specified in Part C of the First Schedule and administered through a Chief Commissioner or Lieutenant-Governor—

(a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State; or

(b) a Council of Advisers or Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any *such law as is* referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending the Constitution.

High Courts for States in Part C of the First Schedule.

241. (1) Parliament may by law constitute a High Court for a State specified in Part C of the First Schedule or declare any court in any such State to be a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifications or exceptions as Parliament may by law provide.

(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of this Constitution in relation to any State specified in Part C of the First Schedule or any area included therein shall continue to exercise such jurisdiction in relation to that State or area after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court in any State specified in Part A or Part B of the First Schedule to, or from, any State specified in

Part C of that Schedule or any area included within that State.

242. (1) Until Parliament by law otherwise provides the constitution, powers and functions of the Coorg Legislative Council shall be the same as they were immediately before the commencement of this Constitution.

Coorg.

(2) The arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall, until other provision is made in that behalf by the President by order, continue unchanged.

PART IX

THE TERRITORIES IN PART D OF THE FIRST SCHEDULE AND OTHER TERRITORIES NOT SPECIFIED IN THAT SCHEDULE

243. (1) Any territory specified in Part D of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or other authority to be appointed by him.

Administration of territories specified in Part D of the First Schedule and other territories not specified in that Schedule.

(2) The President may make regulations for the peace and good government of any such territory and any regulation so made may repeal or amend any law made by Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to such territory.

PART X

THE SCHEDULED AND TRIBAL AREAS

244. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State specified in Part A or Part B of the First Schedule other than the State of Assam.

Administration of Scheduled and tribal areas.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam.

PART XI

RELATIONS BETWEEN THE UNION AND THE STATES

*Chapter I—Legislative Relations**Distribution of Legislative Powers*

Extent of laws made by Parliament and by the Legislatures of States.

245. (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Subject-matter of laws made by Parliament and by the Legislatures of States.

246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State specified in Part A or Part B of the First Schedule also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State specified in Part A or Part B of the First Schedule has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in Part A or Part B of the First Schedule notwithstanding that such matter is a matter enumerated in the State List.

Power of Parliament to provide for the establishment of certain additional courts.

247. Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List.

Residuary powers of legislation.

248. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any

law imposing a tax not mentioned in either of those Lists.

249. (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein :

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

250. (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

251. Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament

Power of Parliament to legislate with respect to a matter in the State List in the national interest.

Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.

which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

252. (1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and resolutions to that effect are passed by *all the Houses of the Legislatures of those States*, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Legislation for giving effect to international agreements.

253. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law *with respect to one of the matters enumerated in the Concurrent List*, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State

specified in Part A or Part B of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or *an* existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail *in that State*:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

255. No Act of Parliament or of a Legislature of a State specified in Part A or Part B of the First Schedule, and no provision in any such Act, shall be invalid by reason only that some recommendation *or previous sanction* required by this Constitution was not given, if assent to that Act was given—

Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.

(a) where the recommendation required was that of the Governor, either by the Governor or by the President ;

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President ;

(c) where the recommendation *or previous sanction* required was that of the President, by the President.

Chapter II—Administrative Relations

General

256. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

Obligation of States and the Union.

257. (1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

Control of the Union over States in certain cases.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction

and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) *The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.*

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

Power of the Union to confer powers, etc., on States in certain cases.

258. (1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in

respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

259. (1) Notwithstanding anything in this Constitution, a State specified in Part B of the First Schedule having any Armed Forces immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said forces after such commencement subject to such general or special orders as the President may from time to time issue in that behalf.

Armed Forces in States in Part B of the First Schedule.

(2) Any such Armed Forces as are referred to in clause (1) shall form part of the Armed Forces of the Union.

260. The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

Jurisdiction of the Union in relation to territories outside India.

261. (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

Public acts, records and judicial proceedings.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Disputes relating to Waters

262. (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

Adjudication of disputes relating to waters of Inter-State rivers or river valleys.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Co-ordination between States

263. If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

Provisions with respect to an Inter-State Council.

- (a) inquiring into and advising upon disputes which may have arisen between States ;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest ; or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

PART XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

Chapter I—Finance

General

Interpretation.

264. In this Part, unless the context otherwise requires,—

- (a) “Finance Commission” means a Finance Commission constituted under article 280 ;
- (b) “State” does not include a State specified in Part C of the First Schedule ;
- (c) references to States specified in Part C of the First Schedule shall include references to any territory specified in Part D of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule.

Taxes not to be imposed save by authority of law.

Consolidated Funds and public accounts of India and of the States.

265. No tax shall be levied or collected except by authority of law.

266. (1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled “the Consolidated Fund of India”, and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and

all moneys received by *that Government* in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or *the public account* of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or *the Consolidated Fund* of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

267. (1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law and the said Fund shall be placed at the disposal of the President *to enable advances to be made by him out of such Fund* for the purposes of meeting unforeseen expenditure * * * pending authorisation of such expenditure by Parliament by law under article 115 or article 116.

Contingency Fund.

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law and the said Fund shall be placed at the disposal of the Governor or Rajpramukh of the State *to enable advances to be made by him out of such Fund* for the purposes of meeting unforeseen expenditure * * * pending authorisation of such expenditure by the Legislature of the State under article 205 or article 206.

Distribution of Revenues between the Union and the States

268. (1) Such stamp duties * * * and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

Duties levied by the Union but collected and appropriated by the States.

(a) in the case where such duties are leviable within any State specified in Part C of the First Schedule, by the Government of India, and

(b) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty

leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

Taxes levied and collected by the Union but assigned to the States.

269. (1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2), namely :

- (a) duties in respect of succession to property other than agricultural land ;
- (b) estate duty in respect of property other than agricultural land ;
- (c) terminal taxes on goods or passengers carried by railway, sea or air ;
- (d) taxes on railway fares and freights ;
- (e) taxes other than stamp duties on transactions in stock-exchanges and futures markets ;
- (f) taxes on the sale or purchase of newspapers and on advertisements published therein.

(2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to States specified in Part C of the First Schedule, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

Taxes levied and collected by the Union and distributed between the Union and the States.

270. (1) Taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to States specified in Part C of the First Schedule or the taxes payable in respect of Union emoluments, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed.

(3) For the purposes of clause (2), in each financial year such percentage as may be prescribed of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Union emolu-

ments shall be deemed to represent proceeds attributable to States specified in Part C of the First Schedule.

(4) In this article—

- (a) "taxes on income" * * * does not include a corporation tax ;
- (b) "prescribed" means—
 - (i) until a Finance Commission has been constituted, prescribed by the President by order, and
 - (ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission ;
- (c) "Union emoluments" includes all emoluments and pensions payable out of the Consolidated Fund of India in respect of which income-tax is chargeable.

271. Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

Surcharge on certain duties and taxes for purposes of the Union.

272. Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the Consolidated Fund of India to the States to which the law imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among those States in accordance with such principles of distribution as may be formulated by such law.

Taxes which are levied and collected by the Union and may be distributed between the Union and the States.

273. (1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Bengal, Bihar, Assam and Orissa in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States such sums as may be prescribed.

Grants in lieu of export duty on jute and jute products.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as *any* export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution, whichever is earlier.

(3) In this article, the expression "prescribed" has the same meaning as in article 270.

Prior recommendation of President required to Bills affecting taxation in which States are interested.

274. (1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article, the expression "tax or duty in which States are interested" means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

Grants from the Union to certain States.

275. (1) *Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States :*

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

(a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part

A of the table appended to paragraph 20 of the Sixth Schedule ; and

- (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(2) *Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament :*

Provided that after a Finance Commission has been constituted, no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

276. (1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

Taxes on professions, trades, callings and employments.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum :

Provided that, if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority, a tax on professions, trades, callings or employments, the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make

laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

Savings.

277. Any taxes, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

Agreement with States in Part B of the First Schedule with regard to certain financial matters.

278. (1) Notwithstanding anything in this Constitution, the Government of India may, subject to the provisions of clause (2), enter into an agreement with the Government of a State specified in Part B of the First Schedule with respect to—

(a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter ;

(b) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this Constitution by the Government of India or from any other sources ;

(c) the contribution by such State in respect of any payment made by the Government of India under clause (1) of article 291,

and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.

(2) An agreement entered into under clause (1) shall continue in force for a period not exceeding ten years from the commencement of this Constitution:

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission he thinks it necessary to do so.

Calculation of "net proceeds" etc.

279. (1) In the foregoing provisions of this Chapter, "net proceeds" means in relation to any tax or duty the

proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

280. (1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

Finance Commission.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds ;
- (b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India ;
- (c) the continuance or modification of the terms of any agreement entered into by the *Government of India with the Government of any State* specified in Part B of the First Schedule under clause (1) of article 278 or under article 306 ; and
- (d) any other matter referred to the Commission by the President in the interests of sound finance.

Recommendations of the Finance Commission.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

281. The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Expenditure defrayable by the Union or a State out of its revenues.

Miscellaneous Financial Provisions

282. The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Custody etc. of Consolidated Funds, Contingency Funds and moneys credited to the public accounts.

283. (1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of the State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and until provision in that behalf is so made, shall be regulated by rules made by the Governor or Rajpramukh of the State.

Custody of suitors' deposits and other moneys received by public servants and courts.

284. All moneys received by or deposited with—

- (a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or
- (b) any court within the territory of India to the credit of any cause, matter, account or persons.

shall be paid into the public account of India or the public account of the State, as the case may be.

285. (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

Exemption of property of the Union from State taxation.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any * * * authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable so long as that tax continues to be levied in that State.

286. (1) No law of a State shall impose or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

Restrictions as to imposition of tax on the sale or purchase of goods.

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation: For the purposes of sub-clause (a) a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce:

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for

the consideration of the President and has received his assent.

*Exemption
from taxes
on electricity.*

287. Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway;

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

*Exemption
from taxation
by States
in respect of
water or
electricity in
certain cases.*

288. (1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation: In this clause, the expression "law in force" has the same meaning as in article 372.

(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

289. (1) The property and income of a State shall be exempt from Union taxation.

Exemption of property of a State from Union taxation.

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes thereof, or any income accruing or arising therefrom.

(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare *to be* incidental to the ordinary functions of government.

290. Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then if—

Adjustment in respect of certain expenses and pensions.

(a) in the case of a charge on the Consolidated Fund of India, the court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State; or

(b) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affairs of the Union or another State,

there shall be charged on and paid out of the Consolidated Fund of the State or as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

291. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the

Privy purse sums of Rulers.

Government of the Dominion of India to any Ruler of such State as privy purse—

(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt from all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part A or Part B of the First Schedule, there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) and for such period as may, subject to any agreement entered into in that behalf under clause (1) of article 278, be determined by order of the President.

Chapter II—Borrowing

*Borrowing by
the Govern-
ment of
India.*

292. The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

*Borrowing
by States.*

293. (1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

*Chapter III—Property, Contracts, Rights, Liabilities,
Obligations and Suits*

294. (1) All property and assets vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets vested in His Majesty for the purposes of the Government of each Governor's Province shall, as from the commencement of this Constitution, vest respectively in the *Union and the corresponding State*, and

Succession to property, assets, rights, liabilities and obligations.

(2) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, *whether arising out of any contract or otherwise*, shall, as from the commencement of this Constitution, be the *rights, liabilities and obligations*, respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

295. (1) *As from the commencement of this Constitution—*

Succession to property, assets, rights, liabilities and obligations of Indian States.

(a) *all property and assets which immediately before the commencement of this Constitution were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List, and*

(b) *all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be the purposes of the Government of India relating to any of the matters enumerated in the Union List,*

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) *Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1).*

*Property
accruing by
escheat or
lapse or
as bona
vacantia.*

296. Subject as hereinafter provided, any property in the territory of India * * * which, if this Constitution had not come into operation, would have accrued to His Majesty by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, * * * vest in such State, and shall, in any other case, vest in the Union :

Provided that any property which at the date when it would have so accrued to His Majesty was in the possession or under the control of the Government of India or the Government of a State * * * shall, according as the purposes for which it was then used or held were purposes of the Union or of a State * * *, vest in the Union or in that State.

*Things of
value lying
within terri-
torial waters
to vest in the
Union.*

297. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.

*Power to
acquire
property.*

298. (1) The executive power of the Union and of each State * * * shall extend, subject to any *law made* by the appropriate Legislature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Union or of a State * * * shall vest in the Union or in such State, as the case may be.

Contracts.

299. (1) All contracts made in the exercise of the executive power of the Union or of a State * * * shall be expressed to be made by the President, or by the Governor or the Rajpramukh of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor or the Rajpramukh by such persons and in such manner as he may direct or authorise.

(2) Neither the President, nor the Governor nor the Rajpramukh shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

300. (1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State * * * may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

Suits and proceedings.

(2) If at the commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

PART XIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

301. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

Freedom of trade, commerce and intercourse.

302. Parliament may by law * * * impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

Power of Parliament to impose restrictions on trade, commerce and intercourse.

303. (1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power

Restrictions on the legislative powers of the

Union and of the States with regard to trade and commerce.

to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Restrictions on trade, commerce and intercourse among States.

304. Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

(a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State * * * without the previous sanction of the President.

Effect of articles 301 and 303 on existing laws.

305. Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise provide.

Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce.

306. Notwithstanding anything in the foregoing provisions of this Part or in any other provisions of this Constitution, any State specified in Part B of the First Schedule which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the

report of the Finance Commission constituted under article 280, he thinks it necessary to do so.

307. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary.

Appointment of authority to carry out the provisions of articles 301 to 304.

PART XIV

SERVICES UNDER THE UNION AND THE STATES

Chapter I—Services

308. In this Part, unless the context otherwise requires, the expression "State" means a State specified in Part A or Part B of the First Schedule.

Interpretation.

309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State :

Recruitment and conditions of service of persons serving the Union or a State.

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and for the Governor or Rajpramukh of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

310. (1) Except as expressly provided by this Constitution every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor or, as the case may be, the Rajpramukh of the State.

Tenure of office of persons serving the Union or a State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor or Rajpramukh of the State, any contract under which a

person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor or the Rajpramukh, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause ; or

(c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

All-India services.

312. (1) Notwithstanding anything in Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States, and subject to the other provisions of this

Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

313. Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

Transitional provisions.

314. Except as otherwise expressly provided by this Constitution, every person who having been appointed by the Secretary of State or Secretary of State in Council, to a civil service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement.

Provision for protection of existing officers of certain services.

Chapter II—Public Service Commissions

315. (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

Public Service Commissions for the Union and for the States.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of *the law*.

(4) The Public Service Commission for the Union, if requested so to do by the Governor or Rajpramukh of a

State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

*Appointment
and term of
office of
members.*

316. (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President and in the case of a State Commission, by the Governor or Rajpramukh of the State :

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under an Indian State shall be included.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier :

Provided that—

(a) a member of a Public Service Commission may by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President and in the case of a State Commission, to the Governor or Rajpramukh of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

*Removal and
suspension of
a member.*

317. (1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Com-

mission shall only be removed from *his* office by order of the President on the ground of misbehaviour after the Supreme Court on reference being made to it by the President has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

*of a
Public Service
Commission.*

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor or Rajpramukh, in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may, by order, remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) * * * *If the* Chairman or any other member of a Public Service Commission * * * is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, *he shall for the purposes of clause (1) be deemed to be guilty of misbehaviour.*

318. In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor or Rajpramukh of the State, may by regulations—

*Power to make
regulations as
to conditions
of service
of members
and staff of the
Commission.*

- (a) determine the number of members of the Commission, and their conditions of service; and
- (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service :

Provided that the conditions of service of a member of

a Public Service Commission shall not be *varied* to his disadvantage after his appointment.

Prohibition as to the holding of office by members of Commission on ceasing to be such members.

319. On ceasing to hold office—

- (a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
- (b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;
- (c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman * * * of a State Public Service Commission *other than a Joint Commission* but not for any other employment either under the Government of India or under the Government of a State;
- (d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of * * * any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

Functions of Public Service Commissions.

320. (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- (b) on the principles to be followed in making

appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

- (c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;
- (d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown *in India or under an Indian State*, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India or, as the case may be, of the *Consolidated Fund of the State*;
- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown *in India or under an Indian State* in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President or, as the case may be, the Governor or Rajpramukh of the State may refer to them :

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Rajpramukh, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of *the members of the Scheduled Castes or Scheduled Tribes* or any backward class of citizens in the Union or a State.

(5) All regulations made under the proviso to clause (3)

by the President or the Governor or Rajpramukh of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

*Power to extend
functions of
Public
Service
Commissions.*

321. An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

*Expenses of
Public Service
Commissions.*

322. The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

*Reports of the
Public Service
Commissions.*

323. (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor or Rajpramukh of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor or Rajpramukh of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor or Rajpramukh, as the case may be, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

PART XV

ELECTIONS

324. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission).

Superintendence, direction and control of elections to be vested in an Election Commission.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President *may* also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from

office except on the recommendation of the Chief Election Commissioner.

(6) The President or the Governor or Rajpramukh of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

No person to be ineligible for inclusion in, or to claim to be included in a special electoral roll on grounds of religion, race, caste or sex.

Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

Power of Parliament to make provision with respect to elections to Legislatures.

Power of Legislature of a State to make provision with respect to elections to such Legislature.

Bar to jurisdiction of courts in

325. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll *or claim to be included in any special electoral roll for any such constituency* on grounds only of religion, race, caste, sex or any of them.

326. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every *person who is a citizen of India and* who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

327. Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

328. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

329. Notwithstanding anything in this Constitution—

(a) the validity of any law relating to the delimitation

of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328 shall not be called in question in any court;

electoral matters.

- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

PART XVI

SPECIAL PROVISIONS RELATING TO MINORITIES

330. (1) Seats shall be reserved in the House of the People for—

Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the people.

- (a) the Scheduled Castes;
- (b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam;
- (c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State in the House of the People as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

331. Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

Special provision regarding the representation of the Anglo-Indian community in the House of the People. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.

332. (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State specified in Part A or Part B of the First Schedule.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.

Special provision regarding representation of the Anglo-Indian community in the Legislative Assemblies of the States.

Reservation of seats and special representation to cease after ten years from the commencement of the Constitution.

333. Notwithstanding anything in article 170, the Governor or Rajpramukh of a State may, if he is of opinion that the Anglo-Indian community *needs representation in the Legislative Assembly of the State* and is not adequately represented *therein*, nominate such number of members of the community to the Assembly as he considers appropriate.

334. Notwithstanding anything in the foregoing provisions of this part, the provisions of this Constitution relating to—

- (a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People *and in the Legislative Assemblies of the States; and*
- (b) the representation of the Anglo-Indian community in the House of the People *and in the Legislative Assemblies of the States by nomination,*

shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution :

Provided that nothing in this article shall affect *any* representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

335. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

Claims of Scheduled Castes and Scheduled Tribes to services and posts.

336. (1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

Special provision for Anglo-Indian community in certain services.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years :

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

337. During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State specified in Part A or Part B of the First Schedule for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

Special provision with respect to educational grants for the benefit of Anglo-Indian community.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years :

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

*Special Officer
for Scheduled
Castes,
Scheduled
Tribes, etc.*

338. (1) There shall be a Special Officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 340 by order specify and also to the Anglo-Indian community.

*Control of the
Union over the
administration
of Scheduled
Areas and
welfare of
Scheduled
Tribes.*

339. (1) The President may at any time and shall, on the expiration of ten years from the commencement of this Constitution, by order, appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States specified in Part A and Part B of the First Schedule.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to any such State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

*Appointment
of a
Commission to
investigate the
conditions of
backward
classes.*

340. (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the

matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented, together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

341. (1) The President may, after consultation with the Governor or Rajpramukh of a State, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes, which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State.

*Scheduled
Castes.*

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. (1) The President may, after consultation with the Governor or Rajpramukh of a State, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State.

*Scheduled
Tribes.*

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

PART XVII

OFFICIAL LANGUAGE

Chapter I—Language of the Union

343. (1) The official language of the Union shall be Hindi in Devanagari script.

*Official
language
of the Union.*

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this

Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used *immediately before* such commencement:

Provided that the President may, during the said period, by order authorise * * * the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals *for any of the official purposes of the Union.*

(3) Notwithstanding anything in this article, Parliament may, *by law provide for the use, after the said period of fifteen years, of—*

(a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in the law.

*Commission
and Committee
of Parliament
on official
language.*

344. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the progressive use of the Hindi language for the official purposes of the Union;

(b) restrictions on the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in article 348;

(d) the form of numerals to be used for any one or more specified purposes of the Union;

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language *for communication between the Union and a State or between one State and another* and their use.

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of *persons belonging to* the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of

thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States *to be elected* respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.

(6) Notwithstanding anything in article 343, the President may after consideration of the report referred to in clause (5) issue directions in accordance with the whole or any part of that report.

Chapter II—Regional Languages

345. Subject to the provisions of articles 346 and 347, *the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State :*

Official language or languages of a State.

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used *immediately before* the commencement of this Constitution.

346. The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union :

Official language for communication between one State and another or between a State and the Union.

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

347. *On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desires that the language spoken by them should be recognised by that State for its use for all or any of the official purposes of the State throughout the State or in any part thereof, issue a direction to the State to that effect and thereupon the use of that language in such areas in that State and for such purposes as may be specified in the direction shall be officially recognised by the State.*

Special provision relating to language spoken by a section of the population of a State.

Chapter III—Language of the Supreme Court, High Courts, etc.

Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.

348. (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides—

- (a) all proceedings in the Supreme Court and in every High Court,
- (b) the authoritative texts—
 - (i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,
 - (ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor or Rajpramukh of a State, and
 - (iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

(2) *Notwithstanding anything in sub-clause (a) of clause (1), the Governor or Rajpramukh of a State may, with the previous consent of the President, authorise the use of the Hindi language or any other language used for any official purposes of the State in proceedings in the High Court having its principal seat in that State :*

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) *Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor or Rajpramukh of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor or Rajpramukh of the State in the Official Gazette of the State shall for the purposes of the said clause be deemed to be the authoritative text thereof.*

Special procedure for enactment of certain

349. During the period of fifteen years from the commencement of this Constitution, no Bill or amendment

making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

laws relating to language.

Chapter IV—Special Directives

350. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Language to be used in representations for redress of grievances.

351. It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule and drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages so specified.

Directive for development of the Hindi Language.

PART XVIII

EMERGENCY PROVISIONS

352. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

Proclamation of Emergency.

(2) A Proclamation issued under clause (1) (in this Constitution referred to as a "Proclamation of Emergency")—

- (a) may be revoked by a subsequent Proclamation;
- (b) shall be laid before each House of Parliament;
- (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and a resolution approving the Proclamation has been passed by the Council of States but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been passed by the House of the People.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

*Effect of
Proclamation
of Emergency.*

353. While a Proclamation of Emergency is in operation, then—

(a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter notwithstanding that it is one which is not enumerated in the Union List.

*Application of
provisions rela-
ting to distribu-
tion of revenues
while a Procla-
mation of
Emergency is in
operation.*

354. (1) The President may, while a Proclamation of Emergency is in operation, by order, direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

(2) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

355. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

Duty of the Union to protect States against external aggression and internal disturbance.

356. (1) If the President, on receipt of a report from the Governor or Rajpramukh of a State or otherwise, is satisfied that *a situation has arisen in which* the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

Provisions in case of failure of constitutional machinery in States.

- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Rajpramukh, as the case may be, or any body or authority in the State other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation (*not being a Proclamation revoking a previous Proclamation*) is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place

during the period of two months referred to in this clause, and a resolution approving the Proclamation has been passed by the Council of States but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been passed by the House of the People.

*Exercise of
legislative pow-
ers under
Proclamation
issued under
article 356.*

357. (1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf,

(b) for Parliament or for the President or other authority, in whom *such* power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of that Government;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

(d) * * *

(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or *such* other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall to the extent of this incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature.

358. While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would *but for the provisions contained in that part* be competent to make or to take, *but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.*

Suspension of provisions of article 19 during emergencies.

359. (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

Suspension of the rights guaranteed by article 32 during emergencies.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

*Provisions as to
financial emer-
gency.*

(3) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

360. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 352 shall apply in relation to a Proclamation issued under this article as they apply in relation to a Proclamation of Emergency issued under article 352.

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

PART XIX

MISCELLANEOUS

*Protection of
President and
Governors and
Rajpramukhs.*

361. (1) The President or the Governor or Rajpramukh of a State shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him

in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61 :

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President or the Governor or Rajpramukh of a State in any court during his term of office.

(3) No process for the arrest or imprisonment of the President or the Governor or Rajpramukh of a State shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President or the Governor or Rajpramukh of a State shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President or as Governor or Rajpramukh of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor or the Rajpramukh, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

362. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

363. (1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an

Rights and privileges of Rulers of Indian States.

Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.

Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement or in any dispute in respect of any right accruing under or liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article—

- (a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and
- (b) "Ruler" includes, the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

Special provisions as to major ports and aerodromes.

364. (1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

- (a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or
- (b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article—

- (a) "major port" means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port;
- (b) "aerodrome" means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.

Effect of failure to comply with, or to give effect to, directions given by the Union.

365. Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, the President may hold that a situation has arisen in which the Government of the State cannot be

carried on in accordance with the provisions of this Constitution.

366. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

Definitions.

- (1) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;
- (2) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;
- (3) "article" means an article of this Constitution;
- (4) "borrow" includes the raising of money by the grant of annuities, and "loan" shall be construed accordingly;
- (5) "clause" means a clause of the article in which the expression occurs;
- (6) "corporation tax" means any tax on income so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled :
 - (a) that it is not chargeable in respect of agricultural income;
 - (b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;
 - (c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;
- (7) "corresponding Province", "corresponding Indian State" or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;

- (8) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly;
- (9) "*estate duty*" means a duty to be assessed on or, by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, on all property passing upon death or deemed, under the provisions of the said laws, so to pass;
- (10) "*existing law*" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;
- (11) "*Federal Court*" means the Federal Court constituted under the Government of India Act, 1935;
- (12) "*foreign State*" for the purposes of articles 9, 102 and 191 means any country other than India but does not include a country notified in this behalf by the President ;
- (13) "*goods*" includes all materials, commodities, and articles ;
- (14) "*guarantee*" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount;
- (15) "*High Court*" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—
 - (a) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court, and
 - (b) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution;
- (16) "*Indian State*" means any territory which the Government of the Dominion of India recognised as such a State;
- (17) "*Part*" means a Part of this Constitution;
- (18) "*pension*" means a pension, whether contributory

or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto of subscriptions to a provident fund;

(19) "public notification" means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State;

(20) "railway" does not include—

(a) a tramway wholly within a municipal area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway;

(21) "Rajpramukh" means—

(a) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;

(b) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and

(c) in relation to any other State specified in Part B of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State,

and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State;

(22) "Ruler" in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler;

(23) "Schedule" means a Schedule to this Constitution;

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

(25) "Scheduled Tribes" means such tribes or tribal

communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;

(26) "securities" includes stock;

(27) "sub-clause" means a sub-clause of the clause in which the expression occurs;

(28) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;

(29) "tax on income" includes a tax in the nature of an excess profits tax;

(30) "Uparajpramukh" in relation to any State specified in Part B of the First Schedule means the person who for the time being is recognised by the President as the Uparajpramukh of that State.

Interpretation.

367. (1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, *subject to any adaptations and modifications that may be made therein under article 372, apply* for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament or Acts or laws of, or made by, the Legislature of a State specified in Part A or Part B of the First Schedule shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor or Rajpramukh, as the case may be.

PART XX

AMENDMENT OF THE CONSTITUTION

Procedure for amendment of the Constitution.

368. An amendment of *this* Constitution may be initiated *only* by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any

change in—

- (a) article 54, article 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States specified in Parts A and B of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

PART XXI

TEMPORARY AND TRANSITIONAL PROVISIONS

369. Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely:

- (a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginced cotton or *Kapas*), cotton seed, paper (including newsprint), foodstuffs (including edible oil-seeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica;
- (b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court;

but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall to the extent of the incompetency cease to have effect on the expiration of the said period except as respects things done or omitted to be done before the expiration thereof.

Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List.

Temporary provisions with respect to the State of Jammu and Kashmir.

370. (1) Notwithstanding anything in this Constitution,—

- (a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;
- (b) the power of Parliament to make laws for the said State shall be limited to—
 - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
 - (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation: For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

- (c) the provisions of article 1 *and of this article* shall apply in relation to that State;
- (d) such of the other provisions of this Constitution *shall apply in relation to that State* subject to such exceptions and modifications * * * as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State *referred to in paragraph (i) of sub-clause (b)* shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in *paragraph (ii) of sub-clause (b)* or in the second proviso to sub-clause (d) of clause (1) *be given* before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify :

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

371. Notwithstanding anything in this Constitution, during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State specified in Part B of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President: * * *

Temporary provisions with respect to States in Part B of the First Schedule.

Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order.

372. (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

Continuance in force of existing laws and their adaptation.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed—

(a) to empower the President to make any declaration or modification of any law after the expiration of two years from the commencement of this Constitution; or

(b) to prevent any competent Legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause.

Explanation I: The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas * * * .

Explanation II: Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect.

Explanation III: Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration, or the date on which it would have expired if this Constitution had not come into force.

Explanation IV: An Ordinance promulgated by the Governor of a Province under section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

Power of President to make order in respect of preventive detention in certain cases.

373. Until provision is made by Parliament under clause (7) of article 22, or the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clauses (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President.

Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court

374. (1) The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court and shall thereupon be entitled to such salaries and

allowances and to such rights in respect of leave of absence and pension as are provided for under article 125 in respect of the Judges of the Supreme Court.

or before His Majesty in Council.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution.

(4) On and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to, and disposed of by, the Supreme Court.

(5) Further provision may be made by Parliament by law to give effect to the provisions of this article.

375. All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of India shall continue to exercise their respective functions subject to the provisions of this Constitution.

Courts, authorities and officers to continue to function subject to the provisions of the Constitution.

376. (1) Notwithstanding anything in clause (2) of article 217, the Judges of a High Court in any Province holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise,

Provisions as to Judges of High Courts.

become on such commencement the Judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 221 in respect of the Judges of such High Court.

(2) The Judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the State so specified and shall, notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article, the expression "Judge" does not include an acting Judge or an additional Judge.

*Provisions as to
Comptroller
and Auditor-
General
of India.*

377. The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries * * * and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement.

*Provisions as to
Public Service
Commissions.*

378. (1) The members of the Public Service Commission for the Dominion of India holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately

before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the corresponding State or the members of the Joint State Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

379. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.

*Provisions as to
provisional
Parliament of
the Union and
the Speaker and
Deputy Speaker
thereof.*

Explanation: For the purposes of this clause, the Constituent Assembly of the Dominion of India includes—

- (i) the members chosen to represent any State or other territory for which representation is provided under clause (2), and
 - (ii) the members chosen to fill casual vacancies in the said Assembly.
- (2) The President may by rules provide for—
- (a) the representation in the provisional Parliament functioning under clause (1) of any State or other territory which was not represented in the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution,
 - (b) the manner in which the representatives of such States or other territories in the provisional Parliament shall be chosen, and
 - (c) the qualifications to be possessed by such representatives.

(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor's Province or of an Indian State corresponding to any State specified in Part B of the First

Schedule or a Minister for any such State, then as from the commencement of this Constitution the seat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy.

(4) Notwithstanding that any such vacancy in the Constituent Assembly of the Dominion of India as is mentioned in clause (3) has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat in the said Assembly until after the vacancy has so occurred.

(5) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall *after such commencement* be the Speaker or, as the case may be, the Deputy Speaker of the provisional Parliament functioning under clause (1).

*Provision as to
President.*

380. (1) Such person as the Constituent Assembly of the Dominion of India shall have elected in that behalf shall be the President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V and has entered upon his office.

(2) In the event of the occurrence of any vacancy in the office of the President so elected by the Constituent Assembly of the Dominion of India by reason of his death, resignation, or removal, or otherwise, it shall be filled by a person elected in that behalf by the provisional Parliament functioning under article 379, and until a person is so elected, the Chief Justice of India shall act as President.

*Council of
Ministers of the
President.*

381. Such persons as the President may appoint in that behalf shall become members of the Council of Ministers of the President under this Constitution, and until appointments are so made, all persons holding office as Ministers for the Dominion of India immediately before the commencement of this Constitution shall on such commencement become and shall continue to hold office as members of the Council of Ministers of the President under this Constitution.

382. (1) Until the House or Houses of the Legislature of each State specified in Part A of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.

*Provision as to
provisional
Legislatures for
States in Part A
of the First
Schedule.*

(2) Notwithstanding anything in clause (1), where a general election to reconstitute the Legislative Assembly of a Province has been ordered before the commencement of this Constitution, the election may be completed after such commencement as if this Constitution had not come into operation and the Assembly so reconstituted shall be deemed to be the Legislative Assembly of that Province for the purposes of that clause.

(3) Any person holding office *immediately before the commencement of this Constitution* as Speaker or Deputy Speaker of the Legislative Assembly or President or Deputy President of the Legislative Council of a Province shall on such commencement be the Speaker or Deputy Speaker of the Legislative Assembly or the Chairman or Deputy Chairman of the Legislative Council, as the case may be, of the corresponding State specified in Part A of the First Schedule while such Assembly or Council functions under clause (1):

Provided that where a general election *has been* ordered for the reconstitution of the Legislative Assembly of a Province before the commencement of this Constitution and the first meeting of the Assembly as so reconstituted is held after such commencement the provisions of this clause shall not apply and the Assembly as reconstituted shall elect *two members* of the Assembly to be respectively the Speaker and Deputy Speaker thereof.

383. Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall on such commencement be the Governor of the corresponding State specified in Part A of the First Schedule until a new Governor has been appointed in accordance with the provisions of Chapter II of Part VI and has entered upon his office.

*Provision as to
Governors of
Provinces.*

*Council of
Ministers of
Governors.*

384. Such persons as the Governor of a State may appoint in that behalf shall become members of the Council of Ministers of the Governor under this Constitution, and, until appointments are so made, all persons holding office as Ministers for the corresponding *Province* immediately before the commencement of this Constitution shall *on such commencement* become, and shall continue to hold office as, members of the Council of Ministers of the Governor of the State under this Constitution.

*Provision as to
provisional
Legislatures
in States in Part B
of the First
Schedule.*

385. Until the House or Houses of the Legislature of a State specified in Part B of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before such commencement as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified.

*Council of
Ministers for
States in Part B
of the First
Schedule.*

386. Such persons as the Rajpramukh of a State specified in Part B of the First Schedule may appoint in that behalf shall become members of the Council of Ministers of such Rajpramukh under this Constitution, and, until appointments are so made, all persons holding office as Ministers *for the corresponding Indian State* immediately before the commencement of this Constitution shall *on such commencement* become, and shall continue to hold office as, members of the Council of Ministers of such Rajpramukh under this Constitution.

*Special provi-
sion as to deter-
mination of
population for
the purpose of
certain
elections.*

387. For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or of any part thereof may, notwithstanding anything in this Constitution, be determined in such manner as the President may by order direct *and different provisions may be made for different States and for different purposes by such order.*

*Provision as to
the filling of
casual vacancies
in the provision-
al Parliament
and provisional
Legislatures of
the States.*

388. (1) Casual vacancies in the seats of members of the provisional Parliament functioning under clause (1) of article 379, including vacancies referred to in clauses (3) and (4) of that article, shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of, or in

connection with, elections to fill such vacancies) shall be regulated—

- (a) in accordance with such rules as may be made in that behalf by the President, and
- (b) until rules are so made, in accordance with the rules relating to the filling of casual vacancies in the Constituent Assembly of the Dominion of India and matters connected therewith in force at the time of the filling of such vacancies or immediately before the commencement of this Constitution, as the case may be, subject to such exceptions and modifications as may be made therein before such commencement by the President of that Assembly and thereafter by the President of the Union:

Provided that where any such seat as is mentioned in this article *was* immediately before it *became* vacant, held by a person belonging to the Scheduled Castes or to the Muslim or the Sikh community and representing a State specified in Part A of the First Schedule, the person to fill such seat shall, unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of the same community :

Provided further that at an election to fill any such vacancy in the seat of a member representing a State specified in Part A of the First Schedule, every member of the Legislative Assembly of that State shall be entitled to participate and vote.

Explanation: For the purposes of this clause—

- (a) all such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936, to be Scheduled Castes in relation to any Province shall be deemed to be Scheduled Castes in relation to that Province or the corresponding State until a notification has been issued by the President under clause (1) of article 341 specifying the Scheduled Castes in relation to that corresponding State;
 - (b) all the Scheduled Castes in any Province or State shall be deemed to be a single community.
- (2) Casual vacancies in the seats of members of a House of the provisional Legislature of a State functioning under article 382 or article 385 shall be filled, and all

matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of or in connection with elections to fill such vacancies) shall be regulated, in accordance with such provisions governing the filling of such vacancies and regulating such matters as were in force immediately before the commencement of this Constitution subject to such exceptions and modifications as the President may by order direct.

Provision as to Bills pending in the Dominion Legislature and in the Legislatures of Provinces and Indian States.

389. A Bill which immediately before the commencement of this Constitution was pending in the Legislature of the Dominion of India or in the Legislature of any Province or Indian State may, subject to any provision to the contrary, which may be included in rules made by Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as if the proceedings taken with reference to the Bill in the Legislature of the Dominion of India or in the Legislature of the Province or Indian State had been taken in Parliament or in the Legislature of the corresponding State.

Moneys received or raised or expenditure incurred between the commencement of the Constitution and the 31st day of March, 1950.

390. The provisions of this Constitution relating to the Consolidated Fund of India or the Consolidated Fund of any State and the appropriation of moneys out of such Fund shall not apply in relation to moneys received or raised or expenditure incurred by the Government of India or the Government of any State between the commencement of this Constitution and the thirty-first day of March, 1950, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a schedule of authorised expenditure authenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor-General of the Dominion of India or the Governor of the corresponding Province or is authorised by the Rajpramukh of the State in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement.

Power of President to amend the First and Fourth Schedules in certain constituencies.

391. (1) If at any time between the passing of this Constitution and its commencement any action is taken under the provisions of the Government of India Act, 1935, which in the opinion of the President requires any amendment in the First Schedule and the Fourth

Schedule, the President may, notwithstanding anything in this Constitution, by order, make such amendments in the said Schedules as may be necessary to give effect to the action so taken, and any such order may contain such supplemental, incidental and consequential provisions as the President may deem necessary.

(2) When the First Schedule or the Fourth Schedule is so amended, any reference to that Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

392. (1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:

Power of the President to remove difficulties.

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V.

(2) Every order made under clause (1) shall be laid before Parliament.

(3) *The powers conferred by this article on the President shall, before the commencement of this Constitution, be exercisable by the Governor-General of the Dominion of India.*

PART XXII

SHORT TITLE, COMMENCEMENT AND REPEALS

393. This Constitution may be called the Constitution of India.

Short title.

394. This article and articles 5, 6, 7, 8, 9, 60, 366, 367, 379, 380, 388, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution.

Commencement.

395. *The Indian Independence Act, 1947, and the Government of India Act, 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949, are hereby repealed.*

Repeals.

FIRST SCHEDULE

[Articles 1 and 4]

THE STATES AND THE TERRITORIES OF INDIA

PART A

Names of States

1. Assam
2. Bengal
3. Bihar
4. Bombay
5. Koshal Vidarbh
6. Madras
7. Orissa
8. Punjab
9. The United
Provinces

Names of corresponding Provinces

- Assam
- West Bengal
- Bihar
- Bombay
- The Central Provinces and Berar
- Madras
- Orissa
- East Punjab
- The United Provinces

Territories of States

The territory of the State of Assam shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas.

The territory of the State of Bengal shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of West Bengal.

The territory of the State of Bombay shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of Bombay and the territories which by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province or which immediately before such commencement were being administered by the Government of that Province under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of each of the other States in this Part shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding Province and the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province.

PART B

Names of States

- | | |
|--|----------------------|
| 1. Hyderabad | 6. Rajasthan |
| 2. Jammu and Kashmir | 7. Saurashtra |
| 3. Madhya Bharat | 8. Travancore-Cochin |
| 4. Mysore | 9. Vindhya Pradesh |
| 5. Patiala and East Punjab
States Union | |

Territories of States

The territory of each of the States in this Part shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State, and, in the case of Rajasthan and Saurashtra, shall also comprise the territories which immediately before such commencement were being administered by the Government of the corresponding Indian State, whether under the provisions of the Extra-Provincial Jurisdiction Act, 1947, or otherwise.

PART C*Names of States*

- | | |
|----------------|---------------------|
| 1. Ajmer | 7. Himachal Pradesh |
| 2. Bhopal | 8. Kutch |
| 3. Bilaspur | 9. Manipur |
| 4. Cooch-Behar | * * * |
| 5. Coorg | 10. Tripura |
| 6. Delhi | |

Territories of States

The territory of the State of Ajmer shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Chief Commissioners' Provinces of Ajmer-Merwara and Panth Piploda.

The territory of each of the States of Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of the same name.

The territory of each of the other States in this Part shall comprise the territories which by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before the commencement of this Constitution being administered as if they were a Chief Commissioner's Province of the same name.

PART D

The Andaman and Nicobar Islands

SECOND SCHEDULE

[Articles 59(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 186 and 221]

PART A

Provisions as to the President and the Governors of States specified in Part A of the First Schedule

1. There shall be paid to the President and to the Governors of the States specified in Part A of the First Schedule the following emoluments per mensem, that is to say:

The President	... ..	10,000 rupees
The Governor of a State	... ..	5,500 rupees

2. There shall also be paid to the President and to the Governors of the States so specified such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3. The President and the Governors of such States throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of, or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.

PART B

Provisions as to the Ministers for the Union and for the States in Part A or Part B of the First Schedule

5. There shall be paid to the Prime Minister and to each of the other Ministers for the Union such salaries and allowances as were payable respectively to the Prime Minister and to each of the other Ministers for the Dominion of India immediately before the commencement of this Constitution.

6. There shall be paid to the Ministers for any State specified in Part A or Part B of the First Schedule such salaries and allowances as were payable to such Ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.

PART C

Provisions as to the Speaker and the Deputy Speaker of the House of the People, and the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the Legislative Assembly of a State in Part A of the First Schedule and the Chairman and the Deputy Chairman of the Legislative Council of any such State.

7. There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution, and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement.

8. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly of a State specified in Part A of the

First Schedule and to the Chairman and the Deputy Chairman of the Legislative Council of such State such salaries and allowances as were payable respectively to the Speaker and the Deputy Speaker of the Legislative Assembly and the President and the Deputy President of the Legislative Council of the corresponding Province immediately before the commencement of this Constitution and where the corresponding Province had no Legislative Council immediately before such commencement there shall be paid to the Chairman and the Deputy Chairman of the Legislative Council of the State such salaries and allowances as the Governor of the State may determine.

PART D

Provisions as to the Judges of the Supreme Court and of the High Courts of States in Part A of the First Schedule.

9. (1) There shall be paid to the Judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:

The Chief Justice	... ..	5,000 rupees
Any other Judge	... ..	4,000 rupees

Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every Judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) *Nothing in sub-paragraph (2) of this paragraph shall apply to a Judge who, immediately before the commencement of this Constitution—*

(a) was holding office as the Chief Justice of the Federal Court and has become on such commencement the Chief Justice of the Supreme Court under clause (1) of article 374,
or

(b) was holding office as any other Judge of the Federal Court and has on such commencement become a Judge (other than the Chief Justice) of the Supreme Court under the said clause,

during the period he holds office as such Chief Justice or other Judge, and every Judge who so becomes the Chief Justice or other Judge of the Supreme Court shall, in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, be entitled to receive in addition to the salary specified in sub-paragraph (1) of this paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

(4) Every Judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded

such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the Judges of the Federal Court.

10. (1) There shall be paid to the Judges of the High Court in each State specified in Part A of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:

The Chief Justice	4,000 rupees
Any other Judge	3,500 rupees

(2) *Every person who immediately before the commencement of this Constitution—*

(a) *was holding office as the Chief Justice of a High Court in any Province and has on such commencement become the Chief Justice of the High Court in the corresponding State under clause (1) of article 376, or*

(b) *was holding office as any other Judge of a High Court in a Province and has on such commencement become a Judge (other than the Chief Justice) of the High Court in the corresponding State under the said clause,*

shall, if he was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, be entitled to receive in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, in addition to the salary specified in the said sub-paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

(3) Every Judge of a High Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the Judges of a High Court for any State shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the Judges of the High Court of the corresponding Province.

11. In this Part, unless the context otherwise requires,—

(a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an *ad hoc* judge;

(b) "actual service" includes—

(i) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

(ii) vacations, excluding any time during which the Judge is absent on leave; and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.

PART E

Provisions as to the Comptroller and Auditor-General of India

12. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on such commencement the Comptroller and Auditor-General of India under article 377 shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing as Auditor-General of India immediately before such commencement.

(3) The rights in respect of leave of absence and pension and the other conditions of service of the Comptroller and Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President.

THIRD SCHEDULE

[Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219]

FORMS OF OATHS OR AFFIRMATIONS

I

Form of oath of office for a Minister for the Union

"I, A.B., do swear in the name of God that I will bear true solemnly affirm faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or illwill."

II

Form of oath of secrecy for a Minister for the Union

"I, A.B., do swear in the name of God that I will not solemnly affirm directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister."

III

Form of oath or affirmation to be made by a member of Parliament

"I, A.B., having been elected (or nominated) a member

of the Council of States (or the House of the People) do swear in the name of God ^{solemnly affirm} that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

IV

Form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India

"I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court of India (or Comptroller and Auditor-General of India) do swear in the name of God ^{solemnly affirm} that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws."

V

Form of oath of office for a Minister for a State

"I, A.B., do swear in the name of God ^{solemnly affirm} that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the State of..... and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or illwill."

VI

Form of oath of secrecy for a Minister for a State

"I, A.B., do swear in the name of God ^{solemnly affirm} that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the State of..... except as may be required for the due discharge of my duties as such Minister."

VII

Form of oath or affirmation to be made by a member of the Legislature of a State

"I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in the name of God ^{solemnly affirm} that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

VIII

Form of oath or affirmation to be made by the Judges of a High Court

"I, A.B., having been appointed Chief Justice (or a Judge) of

the High Court at (or of)..... do
 swear in the name of God that I will bear true faith and
 solemnly affirm allegiance to the Constitution of India as by law established, that
 I will duly and faithfully and to the best of my ability, knowledge
 and judgment perform the duties of my office without fear or
 favour, affection or illwill and that I will uphold the Constitution
 and the laws."

FOURTH SCHEDULE

[Articles 4(1) and 80(2)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or States specified in the first column of the table of seats appended to this Schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that State or States, as the case may be.

TABLE OF SEATS

The Council of States

Representatives of States specified in Part A of the First Schedule

1	2
States	Total seats
1. Assam	6
2. Bengal	14
3. Bihar	21
4. Bombay	17
5. Koshal Vidarbh	12
6. Madras	27
7. Orissa	9
8. Punjab	8
9. The United Provinces	31
TOTAL	145

Representatives of States specified in Part B of the First Schedule

1	2
States	Total seats
1. Hyderabad	11
2. Jammu and Kashmir	4
3. Madhya Bharat	6
4. Mysore	6
5. Patiala and East Punjab States Union	3
6. Rajasthan	9
7. Saurashtra	4
8. Travancore-Cochin	6
9. Vindhya Pradesh	4
TOTAL	53

Representatives of States specified in Part C of the First Schedule

1	2
States and Groups of States	Total seats
1. Ajmer }	1
2. Coorg }	
3. Bhopal	1
4. Bilaspur }	1
5. Himachal Pradesh }	
6. Cooch-Bihar	1
7. Delhi	1
8. Kutch	1
9. Manipur }	1
10. Tripura }	
* * *	* * *
TOTAL	7
TOTAL OF ALL SEATS	205

FIFTH SCHEDULE

[Article 244 (1)]

PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED
AREAS AND SCHEDULED TRIBES

PART A

General

1. *Interpretation*: In this Schedule, unless the context otherwise requires, the expression "State" means a State specified in Part A or Part B of the First Schedule *but does not include the State of Assam*.

2. *Executive power of a State in Scheduled Areas*: Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. *Report by the Governor or Rajpramukh to the President regarding the administration of the Scheduled Areas*: The Governor or Rajpramukh of each State having Scheduled Areas therein shall annually, or whenever so required by the *President*, make a report to the *President* regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART B

*Administration and Control of Scheduled Areas and
Scheduled Tribes*

4. *Tribes Advisory Council*: (1) There shall be established in each State having Scheduled Areas therein and, if the *President* so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor or Rajpramukh, as the case may be.

(3) The Governor or Rajpramukh may make rules prescribing or regulating, as the case may be,—

- (a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;
 - (b) the conduct of its meetings and its procedure in general;
- and

(c) all other incidental matters.

5. *Law applicable to Scheduled Areas*: (1) Notwithstanding anything in this Constitution the Governor or Rajpramukh, as the case may be, may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification *and any direction given under this sub-paragraph may be given so as to have retrospective effect.*

(2) The Governor or Rajpramukh, as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
- (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
- (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any *such* regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor or Rajpramukh may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until, assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor or the Rajpramukh making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C

Scheduled Areas

6. *Scheduled Areas*: (1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order declare to be Scheduled Areas.

(2) The President may at any time by order—

- (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;
 - (b) alter, but only by way of rectification of boundaries, any Scheduled Area;
 - (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;
- and any such order may contain such incidental and consequential

provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D

Amendment of the Schedule

7. *Amendment of the Schedule*: (1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

SIXTH SCHEDULE

[Articles 244 (2) and 275]

PROVISIONS AS TO THE ADMINISTRATION OF THE TRIBAL AREAS IN ASSAM

1. *Autonomous districts and autonomous regions*: (1) Subject to the provisions of this paragraph, the tribal areas in each item of Part A of the table appended to paragraph 20 of this Schedule * * * shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification—

- (a) include any area in Part A of the said table,
- (b) exclude any area from Part A of the said table,
- (c) create a new autonomous district,
- (d) increase the area of any autonomous district,
- (e) diminish the area of any autonomous district,
- (f) unite two or more autonomous districts or parts thereof so as to form one autonomous district,
- (g) define the boundaries of any autonomous district:

Provided that no order shall be made by the Governor under clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule.

2. *Constitution of District Councils and Regional Councils*: (1) There shall be a District Council for each autonomous district consisting of not more than twentyfour members, of whom not less than three-fourths shall be elected on the basis of adult suffrage.

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph (1) of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District

Council of (*name of district*)" and "the Regional Council of (*name of region*)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned and such rules shall provide for—

- (a) the composition of the District Councils and Regional Councils and the allocation of seats therein;
- (b) the delimitation of territorial constituencies for the purpose of elections to those Councils;
- (c) the qualifications for voting at such elections and the preparation of electoral rolls therefor;
- (d) the qualifications for being elected at such elections as members of such Councils;
- (e) the term of office of members of such Councils;
- (f) any other matter relating to or connected with elections or nominations to such Councils;
- (g) the procedure and the conduct of business in the District and Regional Councils;
- (h) the appointment of officers and staff of the District and Regional Councils.

(7) The District or the Regional Council may after its first constitution make rules with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules regulating—

- (a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and
- (b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be :

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council :

Provided further that the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, of the *North Cachar and Mikir Hills* shall be the Chairman *ex-officio* of the District Council in respect of the territories included in items 5 and 6 respectively of Part A of the table appended to paragraph 20 of this

Schedule and shall have power for a period of six years after the first constitution of the District Council, subject to the control of the Governor; to annul or modify any resolution or decision of the District Council or to issue such instructions to the District Council, as he may consider appropriate, and the District Council shall comply with every such instruction issued.

3. *Powers of the District Councils and Regional Councils to make laws* : (1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

- (a) the allotment, occupation or use, or the setting apart, of land other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town :

Provided that nothing in such laws shall prevent the compulsory acquisition of any land whether occupied or unoccupied for public purposes by the *Government* of Assam in accordance with the law for the time being in force authorising such acquisition;

- (b) the management of any forest not being a reserved forest;
- (c) the use of any canal or water-course for the purpose of agriculture;
- (d) the regulation of the practice of jhum or other forms of shifting cultivation;
- (e) the establishment of village or town committees or councils and their powers;
- (f) any other matter relating to village or town administration including village or town police and public health and sanitation;
- (g) *the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of paragraph 4 of this Schedule and by District or Regional Councils or courts constituted by such Councils in disposing of appeals and other proceedings under sub-paragraph (2) of that paragraph and the enforcement of decisions and orders of such Councils and courts;*
- (h) the appointment or succession of Chiefs or Headmen;
- (i) the inheritance of property;
- (j) marriage;
- (k) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

(3) All laws made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect.

4. *Administration of justice in autonomous districts and autonomous regions*: (1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases *between the parties all of whom belong to Scheduled Tribes within such areas other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.*

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases *triable by a village council or court constituted under sub-paragraph (1) of this paragraph* within such region or area, as the case may be other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court in the State except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

5. *Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits and offences*: (1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such region or district, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region *and the Governor may by rules prescribe the procedure to be followed at such trial.*

6. *Powers of the District Council to establish primary schools, etc.:* The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways in the district and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

7. *District and Regional Funds:* (1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

(2) Subject to the approval of the Governor, rules may be made by the District Council and by the Regional Council for the management of the District Fund or, as the case may be, the Regional Fund, and the rules so made may prescribe the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

8. *Powers to assess and collect land revenue and to impose taxes:* (1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of Assam in assessing lands for the purpose of land revenue in the State of Assam generally.

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on land and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

- (a) tax on professions, trades, callings and employments;
- (b) a tax on animals, vehicles and boats;
- (c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph.

9. *Licences or leases for the purpose of prospecting for, or extraction of, minerals* : (1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of Assam in respect of any area within an autonomous district as may be agreed upon between the Government of Assam and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

10. *Power of District Council to make regulations for the control of money-lending and trading by non-tribals* : (1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;
- (b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;
- (c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council;
- (d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council :

Provided that no such regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council :

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

(3) All regulations made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect.

11. *Publication of laws, rules and regulations made under the Schedule* : All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall

on such publication have the force of law.

12. *Application of Acts of Parliament and of the Legislature of the State to autonomous districts and autonomous regions :*

(1) Notwithstanding anything in this Constitution—

(a) no Act of the Legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of clause (a) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region, or shall apply to such district or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

13. *Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement :*

The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State of Assam shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 202.

14. *Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions :* (1) The Governor * * * may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in

clauses (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

(a) the provision of educational and medical facilities and communications in such districts and regions;

(b) the need for any new or special legislation in respect of such districts and regions; and

(c) the administration of the laws, regulations and rules made by the District and Regional Councils;

and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of Assam.

(3) In allocating the business of the Government of the State among his Ministers the Governor * * * may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

15. *Annulment or suspension of acts and resolutions of the District or the Regional Councils*: (1) If at any time the Governor is satisfied that an act or resolution of a Regional Council or a District Council is likely to endanger the safety of India, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made :

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

16. *Dissolution of a District or a Regional Council*: The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a *District or a Regional Council* and—

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months;

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

17. *Exclusion of areas from autonomous districts in forming*

constituencies in such districts: For the purposes of elections to the Legislative Assembly of Assam, the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

18. *Application of the provisions of this Schedule to areas specified in Part B of the table appended to paragraph 20:* (1) The Governor * * * may—

(a) subject to the previous approval of the President, by public notification, apply all or any of the foregoing provisions of this Schedule to any tribal area specified in Part B of the table appended to paragraph 20 of this Schedule or any *part* of such area and thereupon such area or *part* shall be administered in accordance with such provision, and

(b) with like approval exclude *from the said table* any tribal area specified in Part B of *that table* or any *part* of such area.

(2) Until a notification is issued under sub-paragraph (1) of this paragraph in respect of any tribal area specified in Part B of the said table or any *part* of such area, the administration of such area or *part* thereof, as the case may be, shall be carried on by the President through the Governor of Assam as his agent and the provisions of Part IX shall apply thereto as if such area or *part* thereof were a territory specified in Part D of the First Schedule.

(3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President the Governor shall act in his discretion.

19. *Transitional provisions:* (1) As soon as possible after the commencement of this Constitution the Governor * * * shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and until a District Council is so constituted for an autonomous district, the administration of such district shall be vested in the Governor and the following provisions shall apply to the administration of the areas within such district instead of the provisions contained in this Schedule, namely:

(a) no Act of Parliament or of the Legislature of the State shall apply to such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;

(b) the Governor may make regulations for the peace and good government of such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area * * *.

(2) *Any direction given by the Governor under clause (a) of*

sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

(3) *All regulations made under clause (b) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.*

20. *Tribal areas:* (1) The areas specified in Parts A and B of the table below shall be the tribal areas within the State of Assam.

(2) The United Khasi Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Myllem :

Provided that for the purposes of clauses (e), (f) and (g) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8, and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District.

(3) Any reference in the table below to any district (other than the United Khasi Jaintia Hills District) or administrative area shall be construed as a reference to that district or area on the commencement of this Constitution :

Provided that the tribal areas specified in Part B of the table below shall not include any such areas in the plains as may, with the previous approval of the President, be notified by the Governor of Assam in that behalf.

TABLE

PART A

1. The United Khasi-Jaintia Hills District
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Hills.
6. The Mikir Hills.

PART B

1. North East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District, Misimi Hills District.

2. The Naga Tribal Area.

21. *Amendment of the Schedule:* (1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

SEVENTH SCHEDULE
[Article 246]

LIST I—UNION LIST

Old No.	New No.	
1	1	<i>Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its * * * prosecution and after its termination to effective demobilisation.</i>
4	2	Naval, military and air forces; any other armed forces of the Union.
7	3	Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
6	4	Naval, military and air force works.
8	5	Arms, firearms, ammunition and explosives.
9	6	Atomic energy and mineral resources <i>necessary</i> for its production.
5	7	Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
2	8	Central Intelligence Bureau and Investigation.
3	9	Preventive detention * * * for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.
10	10	Foreign Affairs; all matters which bring the Union into relation with any foreign country.
11	11	Diplomatic, consular and trade representation.
12	12	United Nations Organisation.
13	13	Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
15	14	<i>Entering into treaties and agreements with foreign countries and the implementing of treaties, agreements and conventions with foreign countries.</i>
14	15	War and peace.
16	16	Foreign jurisdiction.
19	17	Citizenship, naturalisation and aliens.
20	18	Extradition.
23-21	19	Admission into, and emigration and expulsion from, India; passports and visas.
24	20	Pilgrimages to places <i>outside</i> India.
22	21	Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
38	22	Railways.
31	23	Highways declared by or under law made by Parliament to be national highways.

Old No.	New No.	
32	24	Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways***.
33	25	Maritime shipping and navigation; including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.
36	26	Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
35	27	Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.
25	28	Port quarantine, <i>including hospitals connected therewith</i> ; seamen's and marine hospitals.
30	29	Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
37-32	30	Carriage of passengers and goods by railway, sea or air, <i>or by national waterways in mechanically propelled vessels</i> .
27-28	31	Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.
42	32	Property of the Union and the revenue therefrom, but as regards property situated in a State <i>specified in Part A or Part B of the First Schedule</i> subject * * * to legislation by the State, save in so far as Parliament by law otherwise provides.
43	33	Acquisition or requisitioning of property for the purposes of the Union.
43A	34	Courts of wards for the estates of Rulers of Indian States.
45	35	Public debt of the Union.
46	36	Currency, coinage and legal tender; foreign exchange.
18	37	Foreign loans.
44	38	Reserve Bank of India.
29	39	Post Office Savings Bank.
78	40	Lotteries organised by the Government of India or the Government of a State.
17-26	41	Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.
73	42	Inter-State trade and commerce.
50	43	Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.
50A	44	Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.
47	45	Banking.
48	46	Bills of exchange, cheques, promissory notes and other like instruments.
49	47	Insurance.

Old No.	New No.	
79	48	Stock exchanges and futures markets * * *.
51	49	Patents, inventions and designs; copyright; trademarks and merchandise marks.
61	50	Establishment of standards of weight and measure.
61A	51	Establishment of standards of quality for goods to be exported <i>out of India</i> or transported from one State to another.
64	52	Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
63	53	Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
66	54	Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
65	55	Regulation of labour and safety in mines and oilfields.
74	56	Regulation and development of inter-State rivers and river valleys to the extent to which such regulation <i>and</i> development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
75	57	Fishing and fisheries beyond territorial waters.
76	58	Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.
62	59	<i>Cultivation, manufacture and sale for export, of opium.</i>
70A	60	Sanctioning of cinematograph films for exhibition.
59	61	Industrial disputes concerning Union employees.
39	62	The institutions known <i>at the</i> commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial <i>and</i> the Indian War Memorial, and any other <i>like</i> institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.
40	63	The institutions known <i>at the</i> commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.
40A	64	Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
57	65	<i>Union agencies and institutions for—</i> (a) <i>professional, vocational or technical training, including the training of police officers; or</i> (b) <i>the promotion of special studies or research; or</i> (c) <i>scientific or technical assistance in the investigation or detection of crime.</i>
57A	66	Co-ordination and determination of standards in institutions for higher education <i>or research</i> and, scientific and technical institutions.

Old No.	New No.	
60	67	Ancient and historical monuments and records declared by Parliament by law to be of national importance.
41	68	The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; * * * Meteorological organisations.
55	69	Census.
58	70	Union public services; all-India services; Union Public Service Commission.
58A	71	Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.
68	72	<i>Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.</i>
69	73	<i>Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.</i>
69A-70	74	Powers, privileges and immunities of each House of Parliament and of the members and the committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.
69	75	Emoluments, allowances, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.
	76	<i>Audit of the accounts of the Union and of the States.</i>
52	77	Constitution, organisation, jurisdiction and powers of the Supreme Court (<i>including contempt of such Court</i>), and the fees taken therein; persons entitled to practise before the Supreme Court.
52	78	Constitution and organisation of the High Courts <i>except provisions as to officers and servants of High Courts</i> ; persons entitled to practise before the High Courts.
53	79	Extension of the jurisdiction of a High Court having its principal seat in any State * * * to, and exclusion of the jurisdiction of any such High Court from, any area outside that State.
67	80	Extension of the powers and jurisdiction of members of a police force belonging to any State to any area <i>outside that State</i> , but not so as to enable the police of one State to exercise powers and jurisdiction in any area <i>outside that State</i> without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.
71-72	81	<i>Inter-State migration; inter-State quarantine.</i>
84	82	Taxes on income other than agricultural income.
85	83	Duties of customs including export duties.
86	84	Duties of excise on tobacco and other goods manufactured or produced in India except— (a) alcoholic liquors for human consumption;

Old No. New No.

		(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
87	85	Corporation tax.
88	86	Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
82	87	Estate duty in respect of property other than agricultural land.
81	88	Duties in respect of succession to property other than agricultural land.
83	89	Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.
79	90	* * * Taxes other than stamp duties on transactions <i>in stock exchanges and futures markets</i> .
80	91	Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.
88A	92	Taxes on the sale or purchase of newspapers and on advertisements published therein.
89	93	Offences against laws with respect to any of the matters in this List.
56	94	Inquiries, surveys and statistics for the purpose of any of the matters in this List.
54-34	95	Jurisdiction and powers of all courts, other than the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.
90	96	Fees in respect of any of the matters in this List, but not including fees taken in any court.
91	97	Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

LIST II—STATE LIST

1	1	Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power).
4	2	Police, including railway and village police.
2-3	3	Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court; <i>procedure in rent and revenue courts; officers and servants of the High Court; fees taken in all courts except the Supreme Court.</i>
5	4	Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.
14	5	Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
15	6	Public health and sanitation; hospitals and dispensaries.

Old No.	New No.	
16	7	Pilgrimages, other than pilgrimages to places <i>outside</i> India.
40	8	Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
41	9	Relief of the disabled and unemployable.
17	10	Burials and burial grounds; cremations and cremation grounds.
18	11	Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.
10-10A	12	Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments <i>and records other than those declared by Parliament by law to be of national importance</i> .
19	13	Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.
21	14	Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
22	15	Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
23	16	Pounds and the prevention of cattle trespass.
20	17	Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.
24	18	Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
27	19	Forests.
30	20	Protection of wild animals and birds.
29	21	Fisheries.
25	22	Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.
28	23	Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
37	24	Industries subject to the provisions of entry 52 of List I.
31	25	Gas and gas-works.
32	26	Trade and commerce within the State subject to the provisions of entry 33 of List III * * *.
36	27	Production, supply and distribution of goods subject to the provisions of entry 33 of List III.
32	28	<i>Markets and fairs.</i>
39	29	Weights and measures except establishment of standards.
34	30	Money-lending and money-lenders; relief of agricultural indebtedness.
35	31	Inns and inn-keepers.
42	32	Incorporation, regulation and winding up of corporations, <i>other than those specified in List I</i> , and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

Old No.	New No.	
44	33	Theatres and dramatic performances; cinemas <i>subject to the provision of entry 60 of List I</i> ; sports, entertainments and amusements * * *
45	34	Betting and gambling.
8	35	Works, lands and buildings vested in or in the possession of the State.
9	36	Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III.
11	37	Elections to the Legislature of the State subject to the provisions of any law made by Parliament.
12	38	Salaries and allowances <i>of members of the Legislature of the State</i> , of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof * * *
12A-13	39	Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.
12	40	Salaries and allowances of Ministers for the State.
7	41	State public services; State Public Service Commission.
7A	42	State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.
6	43	Public debt of the State.
26	44	Treasure trove.
46	45	Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
51	46	Taxes on agricultural income.
48	47	Duties in respect of succession to agricultural land.
49	48	Estate duty in respect of agricultural land.
53	49	Taxes on lands and buildings.
54	50	Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
52	51	Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India : (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
61	52	Taxes on the entry of goods into a local area for consumption, use or sale therein.
60	53	Taxes on the consumption or sale of electricity.
58	54	Taxes on the sale or purchase of goods other than newspapers.
58A	55	Taxes on advertisements other than advertisements published in the newspapers.

Old No.	New No.	
50	56	Taxes on goods and passengers carried <i>by road or on inland waterways</i> .
59	57	Taxes on vehicles, * * * whether mechanically propelled or not, <i>suitable for use on road</i> , including tramcars subject to the provisions of entry 35 of List III.
57	58	Taxes on animals and boats.
63	59	Tolls.
56	60	Taxes on professions, trades, callings and employments.
55	61	Capitation taxes.
62	62	Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
47	63	Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
65	64	Offences against laws with respect to any of the matters in this List.
3	65	Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this List * * *.
66	66	Fees in respect of any of the matters in this List, but not including fees taken in any court.

LIST III—CONCURRENT LIST

1	1	Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces <i>or any other armed forces of the Union</i> in aid of the civil power.
2	2	Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.
2A	3	Preventive detention for reasons connected with the security of a State, the maintenance of public order, <i>or the maintenance of supplies and services</i> essential to the * * * community; persons subjected to such detention.
3	4	Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.
6-7	5	Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
8	6	Transfer of property other than agricultural land; registration of deeds and documents.
10	7	Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
15	8	Actionable wrongs.
12	9	Bankruptcy and insolvency.

Old No.	New No.	
9	10	Trust and Trustees.
13	11	Administrators-general and official trustees.
5	12	Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
4-11	13	Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration * * *
15A	14	Contempt of court, <i>but not including contempt of the Supreme Court.</i>
24	15	Vagrancy; nomadic and migratory tribes.
19	16	Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
23	17	Prevention of cruelty to animals.
20A	18	Adulteration of foodstuffs and other goods.
20	19	Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.
34	20	Economic and social planning.
28A	21	Commercial and industrial monopolies, combines and trusts.
28	22	Trade Unions; industrial and labour disputes.
26A-27	23	Social security and social insurance; employment and unemployment.
26	24	Welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
17A	25	Vocational and technical training of labour.
17	26	Legal, medical and other professions.
33B	27	Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.
9A	28	Charities and charitable institutions, charitable and religious endowments and religious institutions.
29	29	Prevention of the extension from one State to another of infectious or contagious diseases of pests affecting men, animals or plants.
25A	30	Vital statistics including registration of births and deaths.
31A	31	Ports <i>other than those declared by or under law made by Parliament or existing law to be major ports.</i>
31	32	Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.
35A	33	Trade and commerce in, and the production, supply and distribution of, the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest.
	34	<i>Price Control.</i>
21	35	Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.
25	36	Factories.
22	37	Boilers.
30	38	Electricity.
18	39	Newspapers, books and printing presses.

Old No.	New No.	
34A	40	Archaeological sites and remains.
33A	41	Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.
35	42	Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose, is to be determined and the form and manner in which such compensation is to be given.
4	43	Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such <i>arrears</i> , arising outside that State.
14	44	Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
36	45	Inquiries and statistics for the purposes of any of the matters specified in List II or List III.
16	46	Jurisdiction and powers of all courts, <i>other than</i> the Supreme Court, with respect to any of the matters in this List.
37	47	Fees in respect of any of the matters in this List, but not including fees taken in any court.

EIGHTH SCHEDULE [Articles 344 and 351]

LANGUAGES

- | | |
|---------------|---------------|
| 1. Assamese. | 8. Marathi. |
| 2. Bengali. | 9. Oriya. |
| 3. Gujarati. | 10. Punjabi. |
| 4. Hindi. | 11. Sanskrit. |
| 5. Kannada. | 12. Tamil. |
| 6. Kashmiri. | 13. Telugu. |
| 7. Malayalam. | 14. Urdu. |

PART NINETEEN
ADOPTION OF THE CONSTITUTION

ADOPTION OF THE CONSTITUTION

November 26, 1949

[The Constituent Assembly took up the third reading of the Constitution on November 17, 1949, on a motion by Ambedkar "that the Constitution as settled by the Assembly be passed". The discussion on the motion concluded on November 26 and the motion was put to vote and adopted amidst prolonged cheers.]

In this part are reproduced the speeches of Ambedkar and Rajendra Prasad.]

(I) B. R. AMBEDKAR'S SPEECH*

November 25, 1949

SIR, LOOKING BACK on the work of the Constituent Assembly it will now be two years, eleven months and seventeen days since it first met on the 9th of December 1946. During this period the Constituent Assembly has altogether held eleven sessions. Out of these eleven sessions, the first six were spent in passing the Objectives Resolution and on the consideration of the Reports of Committees on Fundamental Rights, on Union Constitution, on Union Powers, on Provincial Constitution, on Minorities and on the Scheduled Areas and Scheduled Tribes. The seventh, eighth, ninth, tenth and the eleventh sessions were devoted to the consideration of the Draft Constitution. These eleven sessions of the Constituent Assembly have consumed 165 days. Out of these, the Assembly spent 114 days for the consideration of the Draft Constitution.

Coming to the Drafting Committee, it was elected by the Constituent Assembly on 29th August 1947. It held its first meeting on 30th August. Since August 30th it sat for 141 days during which it was engaged in the preparation of the Draft Constitution. The Draft Constitution, as prepared by the Constitutional Adviser as a text for the Drafting Committee to work upon, consisted of 243 articles and 13 schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 schedules. At the end of the

*See C.A. Deb., Vol. XI, pp. 972-81.

consideration stage, the number of articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635. Of them, the total number of amendments actually moved in the House were 2,473.

I mention these facts because at one stage it was being said that the Assembly had taken too long a time to finish its work, that it was going on leisurely and wasting public money. It was said to be a case of Nero fiddling while Rome was burning. Is there any justification for this complaint? Let us note the time consumed by Constituent Assemblies in other countries appointed for framing their constitutions. To take a few illustrations, the American Convention met on May 25th, 1787 and completed its work on September 17, 1787, *i.e.*, within four months. The Constitutional Convention of Canada met on the 10th October 1864 and the Constitution was passed into law in March 1867 involving a period of two years and five months. The Australian Constitutional Convention assembled in March 1891 and the Constitution became law on the 9th July 1900, consuming a period of nine years. The South African Convention met in October 1908 and the Constitution became law on the 20th September 1909 involving one year's labour. It is true that we have taken more time than what the American or South African Conventions did. But we have not taken more time than the Canadian Convention and much less than the Australian Convention. In making comparisons on the basis of time consumed, two things must be remembered. One is that the Constitutions of America, Canada, South Africa and Australia are much smaller than ours. Our Constitution as I said contains 395 articles while the American has just seven articles, the first four of which are divided into sections which total up to 21, the Canadian has 147, the Australian 128 and the South African, 153 sections. The second thing to be remembered is that the makers of the Constitutions of America, Canada, Australia and South Africa did not have to face the problem of amendments. They were passed as moved. On the other hand, this Constituent Assembly had to deal with as many as 2,473 amendments. Having regard to these facts the charge of dilatoriness seems to me quite unfounded and this Assembly may well congratulate itself for having accomplished so formidable a task in so short a time.

Turning to the quality of the work done by the Drafting Committee, Mr. Naziruddin Ahmed felt it his duty to condemn it outright. In his opinion, the work done by the Drafting Committee is not only not worthy of commendation, but is positively below par. Everybody has a right to have his opinion about the work done by the Drafting Committee and Mr. Naziruddin is welcome to have his own. Mr. Naziruddin Ahmed thinks he is a man of greater talents than any member of the Drafting Committee. The Drafting Committee does not wish to challenge his claim. On the

other hand, the Drafting Committee would have welcomed him in their midst if the Assembly had thought him worthy of being appointed to it. If he had no place in the making of the Constitution it is certainly not the fault of the Drafting Committee.

Mr. Naziruddin Ahmed has coined a new name for the Drafting Committee evidently to show his contempt for it. He calls it a Drifting Committee. Mr. Naziruddin must no doubt be pleased with his hit. But he evidently does not know that there is a difference between drift without mastery and drift with mastery. If the Drafting Committee was drifting, it was never without mastery over the situation. It was not merely angling with the off chance of catching a fish. It was searching in known waters to find the fish it was after. To be in search of something better is not the same as drifting. Although Mr. Naziruddin Ahmed did not mean it as a compliment to the Drafting Committee, I take it as a compliment to the Drafting Committee. The Drafting Committee would have been guilty of gross dereliction of duty and of a false sense of dignity if it had not shown the honesty and the courage to withdraw the amendments which it thought faulty and substitute what it thought was better. If it is a mistake, I am glad the Drafting Committee did not fight shy of admitting such mistakes and coming forward to correct them.

I am glad to find that with the exception of a solitary member, there is a general consensus of appreciation from the members of the Constituent Assembly of the work done by the Drafting Committee. I am sure the Drafting Committee feels happy to find this spontaneous recognition of its labours expressed in such generous terms. As to the compliments that have been showered upon me both by the members of the Assembly as well as by my colleagues of the Drafting Committee I feel so overwhelmed that I cannot find adequate words to express fully my gratitude to them. I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of the Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was therefore greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman. There were in the Drafting Committee men bigger, better and more competent than myself such as my friend Sir Alladi Krishnaswami Ayyar. I am grateful to the Constituent Assembly and the Drafting Committee for reposing in me so much trust and confidence and for having chosen me as their instrument and given me this opportunity of serving the country. (*Cheers*)

The credit that is given to me does not really belong to me. It belongs partly to Sir B. N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee who, as I have said, have sat for.

141 days and without whose ingenuity to devise new formulae and capacity to tolerate and to accommodate different points of view, the task of framing the Constitution could not have come to so successful a conclusion. Much greater share of the credit must go to Mr. S. N. Mukerjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equalled, nor his capacity for hard work. He has been an acquisition to the Assembly. Without his help, this Assembly would have taken many more years to finalize the Constitution. I must not omit to mention the members of the staff working under Mr. Mukerjee. For, I know how hard they have worked and how long they have toiled sometimes even beyond midnight. I want to thank them all for their effort and their co-operation. (*Cheers*)

The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly had been merely a motley crowd, a tessellated pavement without cement, a black stone here and a white stone there in which each member or each group was a law unto itself. There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the Congress Party inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly.

The proceedings of this Constituent Assembly would have been very dull if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of 'yes' men. Fortunately, there were rebels. They were Mr. Kamath, Dr. P. S. Deshmukh, Mr. Sidhva, Prof. Saxena and Pandit Thakurdas Bhargava. Along with them I must mention Prof. K. T. Shah and Pandit Hirday Nath Kunzru. The points they raised were mostly ideological. That I was not prepared to accept their suggestions, does not diminish the value of their suggestions nor lessen the service they have rendered to the Assembly in enlivening its proceedings. I am grateful to them. But for them, I would not have had the opportunity which I got for expounding the principles underlying the Constitution which was more important than the mere mechanical work of passing the Constitution.

Finally, I must thank you, Mr. President, for the way in which you have conducted the proceedings of this Assembly. The courtesy and the consideration which you have shown to the Members of the Assembly can never be forgotten by those who have taken part in the proceedings of this Assembly. There were occasions when the amendments of the Drafting Committee were sought to be barred on grounds purely technical in their nature. Those were very anxious moments for me. I am, therefore,

specially grateful to you for not permitting legalism to defeat the work of Constitution-making.

As much defence as could be offered to the Constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr. T. T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the legislature, the executive and the judiciary. The factors on which the working of those organs of State depends are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave? Will they uphold constitutional methods of achieving their purposes or will they prefer revolutionary methods of achieving them? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to play.

The condemnation of the Constitution largely comes from two quarters, the Communist Party and the Socialist Party. Why do they condemn the Constitution? Is it because it is really a bad Constitution? I venture to say 'no'. The Communist Party wants a Constitution based upon the principle of the Dictatorship of the Proletariat. They condemn the Constitution because it is based upon parliamentary democracy. The Socialists want two things. The first thing they want is that if they come in power, the Constitution must give them the freedom to nationalize or socialize all private property without payment of compensation. The second thing that the Socialists want is that the fundamental rights mentioned in the Constitution must be absolute and without any limitations so that if their party were to come into power, they would have the unfettered freedom not merely to criticize, but also to overthrow the State.

These are the main grounds on which the Constitution is being condemned. I do not say that the principle of parliamentary democracy is the only ideal form of political democracy. I do not say that the principle of no acquisition of private property without compensation is so sacrosanct that there can be no departure from it. I do not say that fundamental rights can never be absolute and the limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation, or, if you think this to be an over-statement, I say they are the views of the members of the Constituent Assembly. Why blame the Drafting Committee for embodying them in the Constitution? I .

say why blame even the members of the Constituent Assembly ? Jefferson, the great American statesman who played so great a part in the making of the American Constitution, has expressed some very weighty views which makers of constitutions can never afford to ignore. In one place, he has said :

We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country.

In another place, he has said :

The idea that institutions established for the use of the nation cannot be touched or modified, even to make them answer their end, because of rights gratuitously supposed in those employed to manage them in the trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself. Yet our lawyers and priests generally inculcate this doctrine, and suppose that preceding generations held the earth more freely than we do; had a right to impose laws on us, unalterable by ourselves, and that we, in the like manner, can make laws and impose burdens on future generations, which they will have no right to alter; in fine, that the earth belongs to the dead and not the living.

I admit that what Jefferson has said is not merely true, but is absolutely true. There can be no question about it. Had the Constituent Assembly departed from this principle laid down by Jefferson it would certainly be liable to blame, even to condemnation. But I ask, has it ? Quite the contrary. One has only to examine the provisions relating to the amendment of the Constitution. The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying to the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution. If those who are dissatisfied with the Constitution have only to obtain a two-thirds majority and if they cannot obtain even a two-thirds majority in the Parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public.

There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is

necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre a larger field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism, as I said, lies in the partition of the legislative and executive authority between the Centre and the units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. The Centre cannot by its own will alter the boundary of that partition. Nor can the judiciary. For as has been well said :

Courts may modify, they cannot replace. They can revise earlier interpretations as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another.

The first charge of centralization defeating federalism must therefore fall.

The second charge is that the Centre has been given the power to override the States. This charge must be admitted. But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind. The first is that these overriding powers do not form the normal feature of the Constitution. Their use and operation are expressly confined to emergencies only. The second consideration is : Could we avoid giving overriding powers to the Centre when an emergency has arisen ? Those who do not admit the justification for such overriding powers to the Centre even in an emergency, do not seem to have a clear idea of the problem which lies at the root of the matter. The problem is so clearly set out by a writer in that well-known magazine. "The Round Table" in its issue of December 1935 that I offer no apology for quoting the following extract from it. Says the writer :

Political systems are a complex of rights and duties resting ultimately on the question, to whom, or to what authority, does the citizen owe allegiance. In normal affairs the question is not present, for the law works smoothly, and a man goes about his business obeying one authority in this set of matters and another authority in that. But in a moment

of crisis, a conflict of claims may arise, and it is then apparent that ultimate allegiance cannot be divided. The issue of allegiance cannot be determined in the last resort by a juristic interpretation of statutes. The law must conform to the facts or so much the worse for the law. When all formalism is stripped away, the bare question is, what authority commands the residual loyalty of the citizen. Is it the Centre or the Constituent State ?

The solution of this problem depends upon one's answer to this question which is the crux of the problem. There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must be to the Centre and not to the constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to the Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the constituent States by these emergency powers ? No more than this—that in an emergency, they should take into consideration alongside their own local interests, the opinions and interests of the nation as a whole. Only those who have not understood the problem, can complain against it.

Here I could have ended. But my mind is so full of the future of our country that I feel I ought to take this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country. (*Cheers.*) What would happen to her independence ? Will she maintain her independence or will she lose it again ? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lose it a second time ? It is this thought which makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by the infidelity and treachery of some of her own people. In the invasion of Sind by Mahommed-Bin-Kasim, the military commanders of King Dahar accepted bribes from the agents of Mahommed-Bin-Kasim and refused to fight on the side of their King. It was Jaichand who invited Mahommed Ghori to invade India and fight against Prithvi Raj and promised him the help of himself and the Solanki Kings. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput kings were fighting the battle on the side of Moghul Emperors. When the British were trying to destroy the Sikh Rulers, Gulab Singh, their principal commander, sat silent and did not help to save the Sikh kingdom. In 1857, when a large part of India had declared a war of independence against the British, the Sikhs stood and watched the event as silent spectators.

Will history repeat itself ? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have

many political parties with diverse and opposing political creeds. Will Indians place the country above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood. (*Cheers.*)

On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lose it again? This is the second thought that comes to my mind and makes me as anxious as the first.

It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments—for the Sanghas were nothing but Parliaments—but the Sanghas knew and observed all the rules of parliamentary procedure known to modern times. They had rules regarding seating arrangements, rules regarding motions, resolutions, quorum, whip, counting of votes, voting by ballot, censure motion, regularization, *res judicata* etc. Although these rules of parliamentary procedure were applied by Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the political assemblies functioning in the country in his time.

This democratic system India lost. Will she lose it a second time? I do not know. But it is quite possible in a country like India—where democracy from its long disuse must be regarded as something quite new—there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and *satyagraha*. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not "to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions". There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish patriot Daniel O'Connell, no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, *Bhakti* or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. *Bhakti* in religion may be a road to the salvation of the soul. But in politics, *Bhakti* or hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our

political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.

The second thing we are wanting in is recognition of the principle of fraternity. What does fraternity mean? Fraternity means a sense of common brotherhood of all Indians—of Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve. How difficult it is can be realized from the story related by James Bryce in his volume on American Commonwealth about the United States of America.

The story is—I propose to recount it in the words of Bryce himself—that—

Some years ago the American Protestant Episcopal Church was occupied at its triennial Convention in revising its liturgy. It was thought desirable to introduce among the short sentence prayers a prayer for the whole people, and an eminent New England divine proposed the words 'O Lord, bless our nation'. Accepted one afternoon, on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word 'nation' as importing too definite a recognition of national unity, that it was dropped and instead there were adopted the words 'O Lord, bless these United States'.

There was so little solidarity in the U.S.A. at the time when this incident occurred that the people of America did not think that they were a nation. If the people of the United States could not feel that they were a nation, how difficult it is for Indians to think that they are a nation. I remember the days when politically minded Indians resented the expression "the people of India". They preferred the expression "the Indian nation." I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the word, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult—far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. These castes are anti-national: in the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint.

These are my reflections about the tasks that lie ahead of us. They may not be very pleasant to some. But there can be no gainsaying that political power in this country has too long been the monopoly of a few and the

many are not only beasts of burden, but also beasts of prey. This monopoly has not merely deprived them of their chance of betterment, it has sapped them of what may be called the significance of life. These down-trodden classes are tired of being governed. They are impatient to govern themselves. This urge for self-realization in the down-trodden classes must not be allowed to devolve into a class struggle or class war. It would lead to a division of the house. That would indeed be a day of disaster. For, as has been well said by Abraham Lincoln, a house divided against itself cannot stand very long. Therefore the sooner room is made for the realization of their aspiration, the better for the few, the better for the country, the better for the maintenance of its independence and the better for the continuance of its democratic structure. This can only be done by the establishment of equality and fraternity in all spheres of life. That is why I have laid so much stress on them.

I do not wish to weary the House any further. Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. There is great danger of things going wrong. Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Government for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.

(II) RAJENDRA PRASAD'S SPEECH*

November 26, 1949

Before I formally put the motion which was moved by Dr. Ambedkar, I desire to say a few words.

I desire to congratulate the Assembly on accomplishing a task of such tremendous magnitude. It is not my purpose to appraise the value of the work that the Assembly has done or the merits or demerits of the Constitution which it has framed. I am content to leave that to others and to posterity. I shall attempt only to point out some of its salient features and the method which we have pursued in framing the Constitution.

*Translation of Hindustani Speech. See *C. A. Deb.*, Vol. XI, pp. 984-95.

Before I do that, I would like to mention some facts which will show the tremendousness of the task which we undertook some three years ago. If you consider the population with which the Assembly has had to deal, you will find that it is more than the population of the whole of Europe minus Russia, being 319 millions as against 317 millions. The countries of Europe have never been able to join together or coalesce even in a Confederacy, much less under one unitary Government. Here, in spite of the size of the population and the country, we have succeeded in framing a Constitution which covers the whole of it. Apart from the size, there were other difficulties which were inherent in the problem itself. We have got many communities living in this country. We have got many languages prevalent in different parts of it. We have got other kinds of differences dividing the people in the different parts from one another. We had to make provision not only for areas which are advanced educationally and economically; we had also to make provision for backward people like the Tribes and for backward areas like the Tribal Areas. The communal problem had been one of the knottiest problems which the country has had before it for a pretty long time. The Second Round Table Conference which was attended by Mahatma Gandhi failed because the communal problem could not be solved. The subsequent history of the country is too recent to require narration here; but we know this that as a result, the country has had to be divided and we have lost two big portions in the north-east and north-west.

Another problem of great magnitude was the problem of the Indian States. When the British came to India, they did not conquer the country as a whole or at one stroke. They got bits of it from time to time. The bits which came into their direct possession and control came to be known as British India; but a considerable portion remained under the rule and control of the Indian Princes. The British thought at the time that it was not necessary or profitable for them to take direct control of those territories, and they allowed the old Rulers to continue subject to their suzerainty. But they entered into various kinds of treaties and engagements with them. We had something near six hundred States covering more than one-third of the territory of India and one-fourth of the population of the country. They varied in size from small tiny principalities to big States like Mysore, Hyderabad, Kashmir, etc. When the British decided to leave this country, they transferred power to us; but at the same time, they also declared that all the treaties and engagements they had with the Princes had lapsed. The paramountcy which they had so long exercised and by which they could keep the Princes in order also lapsed. The Indian Government was then faced with the problem of tackling these States which had different traditions of rule, some of them having some form of popular representation in Assemblies and some having no semblance of anything like that, and governing completely autocratically.

As a result of the declaration that the treaties with the Princes and Paramountcy had lapsed, it became open to any Prince or any combination of Princes to assume independence and even to enter into negotiations with any foreign power and thus become islands of independent territory within the country. There were undoubtedly geographical and other compulsions which made it physically impossible for most of them to go against the Government of India but constitutionally it had become possible. The Constituent Assembly therefore had, at the very beginning of its labours, to enter into negotiations with them to bring their representatives into the Assembly so that a Constitution might be framed in consultation with them. The first efforts were successful and some of them did join this Assembly at an early stage but others hesitated. It is not necessary to pry into the secrets of what was happening in those days behind the scenes. It will be sufficient to state that by August 1947 when the Indian Independence Act came into force, almost all of them with two notable exceptions, Kashmir in the north and Hyderabad in the south, had acceded to India. Kashmir soon after followed the example of others and acceded. There were standstill agreements with all of them including Hyderabad which continued the *status quo*. As time passed, it became apparent that it was not possible at any rate for the smaller States to maintain their separate independent existence and then a process of integration with India started. In course of time not only have all the smaller States coalesced and become integrated with some Province or other of India but some of the larger ones also have joined. Many of the States have formed Unions of their own and such Unions have become part of the Indian Union. It must be said to the credit of the Princes and the people of the States no less than to the credit of the States Ministry under the wise and far-sighted guidance of Sardar Vallabhbhai Patel that by the time we have been able to pass this Constitution, the States are now more or less in the same position as the Provinces and it has become possible to describe all of them including the Indian States and the Provinces as States in the Constitution. The announcement which has been made just now by Sardar Vallabhbhai Patel makes the position very clear, and now there is no difference between the States, as understood before, and the Provinces in the new Constitution.

It has undoubtedly taken us three years to complete this work, but when we consider the work that has been accomplished and the number of days that we have spent in framing this Constitution, the details of which were given by the honourable Dr. B. R. Ambedkar yesterday, we have no reason to be sorry for the time spent.

It has enabled the apparently intractable problem of the States and the communal problem to be solved. What had proved insoluble at the Round Table Conference and had resulted in the division of the country has been solved with the consent of all parties concerned, and again under the wise guidance of the honourable Sardar Vallabhbhai Patel.

At first we were able to get rid of separate electorates which had poisoned our political life for so many years, but reservation of seats for the communities which enjoyed separate electorates before had to be conceded, although on the basis of their population and not as had been done in the Act of 1919 and the Act of 1935 of giving additional representation on account of the so-called historical and other superiority claimed by some of the communities. It has become possible only because the Constitution was not passed earlier that even reservation of seats has been given up by the communities concerned and so our Constitution does not provide for reservation of seats on communal basis, but for reservation only in favour of two classes of people in our population, namely, the depressed classes who are Hindus and the tribal people, on account of their backwardness in education and in other respects. I therefore see no reason to be apologetic about the delay.

The cost too which the Assembly has had to incur during its three years' existence is not too high when you take into consideration the factors going to constitute it. I understand that the expenses up to the 22nd of November come to Rs. 63,96,729.

The method which the Constituent Assembly adopted in connection with the Constitution was first to lay down its terms of reference as it were in the form of an Objectives Resolution which was moved by Pandit Jawaharlal Nehru in an inspiring speech and which constitutes now the Preamble to our Constitution. It then proceeded to appoint a number of committees to deal with different aspects of the constitutional problem. Dr. Ambedkar mentioned the names of these committees. Several of these had as their Chairman either Pandit Jawaharlal Nehru or Sardar Patel to whom thus goes the credit for the fundamentals of our Constitution. I have only to add that they all worked in a business-like manner and produced reports which were considered by the Assembly and their recommendations were adopted as the basis on which the draft of the Constitution had to be prepared. This was done by Mr. B. N. Rau, who brought to bear on his task a detailed knowledge of constitutions of other countries and an extensive knowledge of the conditions of this country as well as his own administrative experience. The Assembly then appointed the Drafting Committee which worked on the original draft prepared by Mr. B. N. Rau and produced the Draft Constitution which was considered by the Assembly at great length at the second reading stage. As Dr. Ambedkar pointed out, there were not less than 7,635 amendments of which 2,473 amendments were moved. I am mentioning this only to show that it was not only the Members of the Drafting Committee who were giving their close attention to the Constitution, but other Members were vigilant and scrutinizing the Draft in all its details. No wonder, that we had to consider not only each article in the Draft, but practically every sentence and sometimes every word in every article. It may interest honourable Members to know that the public

were taking great interest in its proceedings and I have discovered that no less than 53,000 visitors were admitted to the Visitors' gallery during the period when the Constitution has been under consideration. In the result, the Draft Constitution has increased in size, and by the time it has been passed, it has come to have 395 articles and 8 schedules, instead of the 243 articles and 13 schedules of the original Draft of Mr. B. N. Rau. I do not attach much importance to the complaint which is sometimes made that it has become too bulky. If the provisions have been well thought out, the bulk need not disturb the equanimity of our mind.

We have now to consider the salient features of the Constitution. The first question which arises and which has been mooted is as to the category to which this Constitution belongs. Personally, I do not attach any importance to the label which may be attached to it—whether you call it Federal Constitution or Unitary Constitution or by any other name. It makes no difference so long as the Constitution serves our purpose. We are not bound to have a Constitution which completely and fully falls in line with known categories of constitutions in the world. We have to take certain facts of history in our own country and the Constitution has not to an inconsiderable extent been influenced by such realities as facts of history.

You are all aware that until the Round Table Conference of 1930, India was completely a Unitary Government, and the Provinces derived whatever power they possessed from the Government of India. It was there for the first time that the question of Federation in a practical form arose which would include not only the Provinces but also the many States that were in existence. The Constitution of 1935 provided for a Federation in which both the Provinces of India and the States were asked to join. But the federal part of it could not be brought into operation, because the terms on which the Princes could agree to join it could not be settled in spite of prolonged negotiations. And, when the war broke out, that part of the Constitution had practically to be abrogated.

In the present Constitution it has been possible not only to bring in practically all the States which fell within our geographical limits, but to integrate the largest majority of them in India, and the Constitution as it stands practically makes no difference so far as the administration and the distribution of powers among the various organs of the State are concerned between what were the Provinces and what were Indian States before. They are all now more or less on the same footing and, as time passes, whatever little distinction still exists is bound to disappear. Therefore so far as labelling is concerned, we need not be troubled by it.

Well, the first and the most obvious fact which will attract any observer is the fact that we are going to have a Republic. India knew republics in the past olden days, but that was 2,000 years ago or more and those republics were small republics. We never had anything like the Republic

which we are going to have now, although there were empires in those days as well as during the Mughal period which covered very large parts of the country. The President of the Republic will be an elected President. We never have had an elected Head of the State which covered such a large area of India. And it is for the first time that it becomes open to the humblest and the lowliest citizens of the country to deserve and become the President or the Head of this big State which counts among the biggest States of the world today. This is not a small matter. But because we have an elected President, some of the problems which are of a very difficult nature have arisen. We have provided for the election of the President. We have provided for an elected Legislature which is going to have supreme authority. In America, the Legislature and the President are both elected and there both have more or less equal powers—each in its or his own sphere, the President in the executive sphere and the Legislature in the legislative sphere.

We considered whether we should adopt the American model or the British model where we have a hereditary king who is the fountain of all honour and power, but who does not actually enjoy any power. All the power rests in the Legislature to which the Ministers are responsible. We have had to reconcile the position of an elected President with an elected Legislature and, in doing so, we have adopted more or less the position of the British monarch for the President. This may or may not be satisfactory. Some people think too much power has been given to the President; others think that the President, being an elected President, should have even more powers than are given to him.

If you look at it from the point of view of the electorate which elects the Parliament and which elects the President, you will find that practically the entire adult population of the country joins in electing this Parliament and it is not only the Members of the Parliament of India but also the Members of the Legislative Assemblies of the States who join in electing the President. It thus comes about that, while the Parliament and Legislative Assemblies are elected by the adult population of the country as a whole, the President is elected by representatives who represent the entire population twice over, once as representatives of the States and again as their representatives in the Central Parliament of the country. But although the President is elected by the same electorate as the Central and State Legislature, it is as well that his position is that of a constitutional President.

Then we come to the Ministers. They are of course responsible to the Legislature and tender advice to the President who is bound to act according to that advice. Although there are no specific provisions, so far as I know, in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the convention under which in England the King acts always on the advice of his Ministers will •

be established in this country also and the President, not so much on account of the written word in the Constitution, but as the result of this very healthy convention, will become a constitutional President in all matters.

The Central Legislature consists of two Houses known as the House of the People and the Council of States which both together constitute the Parliament of India. In the Provinces, or States as they are now called, we shall have a Legislative Assembly in all of them except those which are mentioned in Parts C and D of Schedule I, but every one of them will not have a second chamber. Some of the Provinces, whose representatives felt that a second chamber is required for them, have been provided with a second chamber. But there is a provision in the Constitution that if a Province does not want such a second chamber to continue, or if a Province which has not got one wants to establish one, the wish has to be expressed through the Legislature by a majority of total number of members in the Legislative Assembly. So, even while providing some of the States with second chambers, we have provided also for their easy removal or for their easy establishment by making this kind of amendment of the Constitution not a constitutional amendment, but a matter of ordinary parliamentary legislation.

We have provided for adult suffrage by which the Legislative Assemblies in the Provinces and the House of the People in the Centre will be elected. It is a very big step that we have taken. It is big not only because our present electorate is a very much smaller electorate and based very largely on property qualification, but it is also big because it involves tremendous numbers. Our population now is something like 320 millions if not more and we have found from experience gained during the enrolment of voters that has been going on in the Provinces that 50 per cent roughly represent the adult population. And on that basis we shall have not less than 160 million voters on our rolls. The work of organizing election by such vast numbers is of tremendous magnitude and there is no other country where election on such a large scale has ever yet been held.

I will just mention to you some facts in this connection. The Legislative Assemblies in the Provinces, it is roughly calculated, will have more than 3,800 members who will have to be elected in as many constituencies or perhaps a few less. Then there will be something like 500 members for the House of the People and about 220 members for the Council of States. We shall thus have to provide for the election of more than 4,500 members and the country will have to be divided into something like 4,000 constituencies or so. I was, the other day, as a matter of amusement, calculating what our electoral roll will look like. If you print 40 names on a page of foolscap size, we shall require something like 20 lakhs of sheets of foolscap size to print all the names of the voters, and if you combine the whole thing in one volume, the thickness of the volume will be something like 200 yards. That alone gives us some idea of the vastness of the task

and the work involved in finalizing the rolls, delimiting constituencies, fixing polling stations and making other arrangements which will have to be done between now and the winter of 1950-51 when it is hoped the elections may be held.

Some people have doubted the wisdom of adult franchise. Personally, although I look upon it as an experiment the result of which no one will be able to forecast today, I am not dismayed by it. I am a man of the village and although I have had to live in cities for a pretty long time, on account of my work, my roots are still there. I, therefore, know the village people who will constitute the bulk of this vast electorate. In my opinion, our people possess intelligence and common sense. They also have a culture which the sophisticated people of today may not appreciate, but which is solid. They are not literate and do not possess the mechanical skill of reading and writing. But, I have no doubt in my mind that they are able to take measure of their own interest and also of the interests of the country at large if things are explained to them. In fact, in some respects, I consider them to be even more intelligent than many a worker in a factory, who loses his individuality and becomes more or less a part of the machine which he has to work. I have, therefore, no doubt in my mind that if things are explained to them, they will not only be able to pick up the technique of election, but will be able to cast their votes in an intelligent manner and I have, therefore, no misgivings about the future, on their account. I cannot say the same thing about the other people who may try to influence them by slogans and by placing before them beautiful pictures of impracticable programmes. Nevertheless, I think their sturdy common sense will enable them to see things in the right perspective. We can, therefore, reasonably hope that we shall have Legislatures composed of members who shall have their feet on the ground and who will take a realistic view of things.

Although provision has been made for a second chamber in the Parliament and for second chambers in some of the States, it is the popular House which is supreme. In all financial and money matters, the supremacy of the popular House is laid down in so many words. But even in regard to other matters where the Upper Chamber may be said to have equal powers for initiating and passing laws, the supremacy of the popular House is assured. So far as Parliament is concerned, if a difference arises between the two chambers, a joint session may be held; but the Constitution provides that the number of members of the Council of States shall not be more than 50 per cent of the members of the House of the People. Therefore, even in the case of a joint session, the supremacy of the House of the People is maintained, unless the majority in that very House is a small one which will be just a case in which its supremacy should not prevail. In the case of Provincial Legislatures, the decision of the Lower House prevails if it is taken a second time. The Upper Chamber therefore can only delay the passage of Bills for a time, but cannot prevent it. The President or the

Governor, as the case may be, will have to give his assent to any legislation, but that will be only on the advice of his Ministry which is responsible ultimately to the popular House. Thus it is the will of the people as expressed by their representatives in the popular chamber that will finally determine all matters. The second chamber and the President or the Governor can only direct reconsideration and can only cause some delay ; but if the popular chamber is determined, it will have its way under the Constitution. The Government therefore of the country as a whole, both in the Centre and in the Provinces, will rest on the will of the people which will be expressed from day to day through their representatives in the Legislatures and occasionally directly by them at the time of the general elections.

We have provided in the Constitution for a judiciary which will be independent. It is difficult to suggest anything more to make the Supreme Court and the High Courts independent of the influence of the executive. There is an attempt made in the Constitution to make even the lower judiciary independent of any outside or extraneous influence. One of our articles makes it easy for the State Governments to introduce separation of executive from judicial functions and placing the magistracy which deals with criminal cases on similar footing as civil courts. I can only express the hope that this long overdue reform will soon be introduced in the States.

Our Constitution has devised certain independent agencies to deal with particular matters. Thus it has provided for Public Service Commissions both for the Union and for the States and placed such Commissions on an independent footing so that they may discharge their duties without being influenced by the executive. One of the things against which we have to guard is that there should be no room as far as it is humanly possible for jobbery, nepotism and favouritism. I think the provisions which we have introduced into our Constitution will be very helpful in this direction.

Another independent authority is the Comptroller and Auditor-General who will watch our finances and see to it that no part of the revenues of India or of any of the States is used for purposes and on items without due authority and whose duty it will be otherwise to keep our accounts in order. When we consider that our Governments will have to deal with hundreds of crores, it becomes clear how important and vital this department will be. We have provided another important authority *i.e.*, the Election Commissioner, whose function it will be to conduct and supervise the elections to the Legislatures and to take all other necessary action in connection with them. One of the dangers which we have to face arises out of any corruption which parties, candidates or the Government in power may practise. We have had no experience of democratic elections for a long time except during the last few years and now that we have got real power, the danger of corruption is not only imaginary. It is therefore

as well that our Constitution guards against this danger and makes provision for an honest and straightforward election by the voters. In the case of the Legislature, the High Courts, the Public Service Commission, the Comptroller and Auditor-General and the Election Commissioner, the staff which will assist them in their work has also been placed under their control and in most of these cases their appointment, promotion and discipline vest in the particular institution to which they belong, thus giving additional safeguards about their independence.

The Constitution has given in two schedules, namely, Schedules V and VI, special provisions for the administration and control of Scheduled Areas and Scheduled Tribes. In the case of the Tribes and Tribal Areas in States other than Assam, the Tribes will be able to influence the administration through the Tribes Advisory Council. In the case of the Tribes and Tribal Areas in Assam, they are given larger powers through their District Councils and Autonomous Regional Councils. There is further provision for a Minister in the State Ministries to be in charge of the welfare of the Tribes and the Scheduled Castes and a Commission will also report about the way in which the areas are administered. It was necessary to make this provision on account of the backwardness of the Tribes which require protection and also because of their own way of solving their own problems and carrying on their tribal life. These provisions have given them considerable satisfaction as the provision for the welfare and protection of the Scheduled Castes has given satisfaction to them.

The Constitution has gone into great details regarding the distribution of power and functions between the Union and the States in all aspects of their administrative and other activities. It has been said by some that the powers given to the Centre are too many and too extensive and the States have been deprived of power which should really belong to them in their own fields. I do not wish to pass any judgment on this criticism and can only say that we cannot be too cautious about our future, particularly when we remember the history of this country extending over many centuries. But such powers as have been given to the Centre to act within the sphere of the States relate only to emergencies, whether political or financial and economic, and I do not anticipate that there will be any tendency on the part of the Centre to grab more power than is necessary for good administration of the country as a whole. In any case the Central Legislature consists of representatives from the States and unless they are convinced of their over-riding necessity, they are not likely to consent to the use of any such powers by the Central executive as against the States whose people they represent. I do not attach much importance to the complaint that residuary powers have been vested in the Union. Powers have been very meticulously and elaborately defined and demarcated in the three lists of the Seventh Schedule, and the residue, whatever it may be, is not likely to cover any large field, and, therefore, the vesting of such residuary powers does not mean any very

serious derogation in fact from the power which ought to belong to the States.

One of the problems which the Constituent Assembly took considerable time in solving relates to the language for official purposes of the country. There is a natural desire that we should have our own language, and in spite of the difficulties on account of the multiplicity of languages prevalent in the country, we have been able to adopt Hindi, which is the language that is understood by the largest number of people in the country, as our official language. I look upon this as a decision of very great importance when we consider that in a small country like Switzerland they have no less than three official languages and in South Africa two official languages. It shows a spirit of accommodation and a determination to organize the country as one nation that those whose language is not Hindi have voluntarily accepted it as the official language. (*Cheers*) There is no question of imposition now. English during the period of British rule and Persian during the period of the Muslim empire were court and official languages. Although people have studied them and have acquired proficiency in them, nobody can claim that they were voluntarily adopted by the people of the country at large. Now for the first time in our history we have accepted one language which will be the language to be used all over the country for all official purposes, and let me hope that it will develop into a national language in which all will feel equal pride while each area will be not only free, but also encouraged to develop its own peculiar language in which its culture and its traditions are enshrined. The use of English during the period of transition was considered inevitable for practical reasons and no one need be despondent over this decision, which has been dictated purely by practical considerations. It is the duty of the country as a whole now and especially of those whose language is Hindi to so shape and develop it as to make it the language in which the composite culture of India can find its expression adequately and nobly.

Another important feature of our Constitution is that it enables amendments to be made without much difficulty. Even the constitutional amendments are not as difficult as in the case of some other countries, but many of the provisions in the Constitution are capable of being amended by the Parliament by ordinary Acts and do not require the procedure laid down for constitutional amendments to be followed. There was a provision at one time which proposed that amendments should be made easy for the first five years after the Constitution comes into force, but such a provision has become unnecessary on account of the numerous exceptions which have been made in the Constitution itself for amendments without the procedure laid down for constitutional amendments. On the whole, therefore, we have been able to draft a Constitution which I trust will serve the country well.

There is a special provision in our directive principles to which I attach great importance. We have not provided for the good of our people only

but have laid down in our directive principles that our State shall endeavour to promote material peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations and encourage settlement of international disputes by arbitration. In a world torn with conflicts, in a world which even after the devastation of two world wars is still depending on armaments to establish peace and goodwill, we are destined to play a great part, if we prove true to the teachings of the Father of the Nation and give effect to this directive principle in our Constitution. Would to God that He would give us the wisdom and the strength to pursue this path in spite of the difficulties which beset us and the atmosphere which may well choke us. Let us have faith in ourselves and in the teachings of the Master whose portrait hangs over my head and we shall fulfil the hopes and prove true to the best interests of not only our country but of the world at large.

I do not propose to deal with the criticism which relates mostly to the articles in the part dealing with fundamental rights by which absolute rights are curtailed and the articles dealing with emergency powers. Other members have dealt with these objections at great length. All that I need state at this stage is that the present conditions of the country and tendencies which are apparent have necessitated these provisions which are also based on the experience of other countries which have had to enforce them through judicial decisions, even when they were not provided for in the Constitution.

There are only two regrets which I must share with the honourable Members. I would have liked to have some qualifications laid down for members of the Legislatures. It is anomalous that we should insist upon high qualifications for those who administer or help in administering the law but none for those who make it except that they are elected. A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things, to act independently and above all to be true to those fundamental things of life—in one word, to have character. (*Hear, hear*). It is not possible to devise any yardstick for measuring the moral qualities of a man and so long as that is not possible, our Constitution will remain defective. The other regret is that we have not been able to draw up our first Constitution of a free Bharat in an Indian language. The difficulties in both cases were practical and proved insurmountable. But that does not make the regret any the less poignant.

We have prepared a democratic Constitution. But successful working of democratic institutions requires in those who have to work them willingness to respect the viewpoints of others, capacity for compromise and accommodation. Many things which cannot be written in a Constitution are done by conventions. Let me hope that we shall show those capacities and develop those conventions. The way in which we have been able to draw this Constitution without taking recourse to voting and to divisions in lobbies strengthens that hope.

Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provisions in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences. We can only hope that the country will throw up such men in abundance. I can say this from the experience of the struggle that we have had during the period of the freedom movement that new occasions throw up new men; not once but almost on every occasion when all leading men in the Congress were clapped into prison suddenly without having the time to leave instructions to others and even to make plans for carrying on their campaigns, people arose from amongst the masses who were able to continue and conduct the campaigns with intelligence, with initiative, with capacity for organization which nobody suspected they possessed. I have no doubt that when the country needs men of character, they will be coming up and the masses will throw them up. Let not those who have served in the past therefore rest on their oars, saying that they have done their part and now has come the time for them to enjoy the fruits of their labours. No such time comes to anyone who is really earnest about his work. In India today I feel that the work that confronts us is even more difficult than the work which we had when we were engaged in the struggle. We did not have then any conflicting claims to reconcile, no loaves and fishes to distribute, no powers to share. We have all these now, and the temptations are really great. Would to God that we shall have the wisdom and the strength to rise above them, and to serve the country which we have succeeded in liberating.

Mahatma Gandhi laid stress on the purity of the methods which had to be pursued for attaining our ends. Let us not forget that this teaching has eternal value and was not intended only for the period of stress and struggle but has as much authority and value today as it ever had before. We have a tendency to blame others for everything that goes wrong and not

to introspect and try to see if we have any share in it or not. It is very much easier to scan one's own actions and motives if one is inclined to do so than to appraise correctly the actions and motives of others. I shall only hope that all those whose good fortune it may be to work this Constitution in future will remember that it was a unique victory which we achieved by the unique method taught to us by the Father of the Nation, and it is up to us to preserve and protect the independence that we have won and to make it really bear fruit for the man in the street. Let us launch on this new enterprise of running our Independent Republic with confidence, with truth and non-violence and above all with heart within and God overhead.

Before I close, I must express my thanks to all the Members of this august Assembly from whom I have received not only courtesy but, if I may say so, also their respect and affection. Sitting in the Chair and watching the proceedings from day to day, I have realized as nobody else could have, with what zeal and devotion the members of the Drafting Committee and especially its Chairman, Dr. Ambedkar, in spite of his indifferent health, have worked. (*Cheers*). We could never make a decision which was or could be even so right as when we put him on the Drafting Committee and made him its Chairman. He has not only justified his selection but has added lustre to the work which he has done. In this connection, it would be invidious to make any distinction as among the other members of the Committee. I know they have all worked with the same zeal and devotion as its Chairman, and they deserve the thanks of the country.

I must convey, if you will permit me, my own thanks as well as the thanks of the House to our Constitutional Adviser, Shri B. N. Rau, who worked honorarily all the time that he was here, assisting the Assembly not only with his knowledge and erudition but also enabled the other Members to perform their duties with thoroughness and intelligence by supplying them with the material on which they could work. In this he was assisted by his band of research workers and other members of the staff who worked with zeal and devotion. Tribute has been paid justly to Shri S. N. Mukerjee who has proved of such invaluable help to the Drafting Committee.

Coming to the staff of the Secretariat of the Constituent Assembly I must first mention and thank the Secretary, Mr. H. V. R. Iengar, who organized the Secretariat as an efficient working body. Although latterly when the work began to proceed with more or less clock-work regularity, it was possible for us to relieve him of part of his duties to take up other work, he has never lost touch with our Secretariat or with the work of the Constituent Assembly.

The members of the staff have worked with efficiency and with devotion under our Deputy Secretary Shri Jugal Kishore Khanna. It is not always possible to see their work which is done removed from the gaze of the Members of this Assembly but I am sure the tribute which Member after Member has paid to their efficiency and devotion to work is thoroughly

deserved. Our Reporters have done their work in a way which will give credit to them and which has helped in the preservation of a record of the proceedings of the Assembly which have been long and taxing. I must mention the translators as also the Translation Committee under the chairmanship of honourable Shri G. S. Gupta who have had a hard job in finding Hindi equivalents for English terms used in the Constitution. They are just now engaged in helping a Committee of Linguistic Experts in evolving a vocabulary which will be acceptable to all other languages as equivalents to English words used in the Constitution and in law. The Watch and Ward officers and the Police and last though not least the Marshal have all performed their duties to our satisfaction. (*Cheers*). I should not forget the peons and even the humbler people. They have all done their best. It is necessary for me to say all this because with the completion of the work of Constitution-framing, most of them who have been working on a temporary basis, will be out of employment unless they could be absorbed in other Departments and Ministries. I do hope that it will be possible to absorb them (*hear, hear*) as they have considerable experience and are a willing and efficient set of workers. All deserve my thanks as I have received courtesy, co-operation and loyal service from all. (*Prolonged Cheers*).

It now remains to put the motion which was moved by Dr. Ambedkar, to the vote of the House. The question is :

That the Constitution as settled by the Assembly be passed.

The motion was adopted. (Prolonged Cheers).